

Governor Edmund G. Brown Jr.  
State of California

Anna Caballero, Secretary  
State and Consumer Services Agency

Brian Stiger, Acting Director  
Department of Consumer Affairs



Larry L. Renner, BS, RCP  
President

Murray Olson, RCP, RRT  
Vice President

Lupe Aguilera  
Member

Sandra Magaña  
Member

Richard L. Sheldon, MD, FACP  
Member

Charles B. Spearman, MSED, RCP  
Member

Barbara M. Stenson, RCP, RRT  
Member

Stephanie Nunez  
Executive Officer



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# Respiratory Care Board of California

444 North 3rd Street, Suite 270, Sacramento, CA 95811

## Board Meeting Agenda

Tuesday, May 10, 2011

**Bahia Resort Hotel Mission Bay, San Diego**  
**(Del Mar Room)**  
**998 West Mission Bay Drive**  
**San Diego, CA 92109**  
**(858) 488.0551**

### 9:00 AM Call to Order

1. **Approval of February 25, 2011 Minutes** (*Larry Renner*)
2. **Public Comment** (*Larry Renner*)  
*Public comment will be accepted after any agenda item or toward the end of the agenda for public comment not related to any particular agenda item. The President may set a time limit for public comment as needed.*
3. **DCA Director Comment** (*Department of Consumer Affairs Representative*)
4. **On-Line License Renewal Update** (*Stephanie Nunez*)
5. **Consideration to Adopt Proposed Probation Monitoring Drug Testing Frequency Policy** (*Stephanie Nunez*)
6. **Student Background Checks - Discussion/Action** (*Barbara Stenson*)
7. **Board Action in Response to Affirmative Response to Application Question No. 20 - Discussion/Action** (*Murray Olson*)  
*Do you have a medical condition or does your use of chemical substances in any way impair or limit your ability to conduct with safety to the public, the practice of respiratory care?*
8. **"Transitioning the Respiratory Therapist Workforce for 2015 and Beyond" Update** (*Bud Spearman*)
  - a. Consideration to require passage of RRT examination as part of State licensure - Discussion/Possible Action (*Stephanie Nunez*)
9. **Recognition of Service: Richard L. Sheldon, MD, FACP** (*Larry Renner*)

### 10:45 AM 10. RCP Recognition (*Larry Renner*)

*Members will relocate to the Mission Bay Ballroom to meet members of the California Society for Respiratory Care, to participate in a recognition ceremony for an RCP at 10:50 AM. Following the ceremony, members will return to the Del Mar Room at approximately 11:15 AM, to reconvene the board meeting.*

*The Respiratory Care Board of California's mission is to protect and serve the consumer by enforcing the Respiratory Care Practice Act and its regulations, expanding the delivery and availability of services, increasing public awareness of respiratory care as a profession and supporting the development and education of all respiratory care practitioners.*

## • Closed Session •

The Board will convene into Closed Session, as authorized by Government Code Section 11126(c), subdivision (3), for approximately 20 minutes to deliberate:

- I. Proposed Stipulated Decision: Sheila Nadine Rozmus, RCP
- II. Deliberation on Any Other Matters

### 11. Polysomnography/CDPH Meeting Update *(Stephanie Nunez)*

### 12. Legislation of Interest - Discussion/Action *(Larry Renner)*

- a. 2011 Legislation  
Senate Bills: 103, 231, 538, 539, 541, 544, 943, and 944  
Assembly Bills: 569, 958, 991, and 1273  
And any other newly discovered bills relevant to the Board's activities
- b. Proposed 2012 Legislation

### 13. Public Comment on Items Not on the Agenda

### 14. Future Agenda Items

### 12:30 PM 15. Adjournment

## DIRECTIONS

### Directions From San Diego Airport

1. Head west on Airport Terminal Rd
2. Keep right at the fork
3. Turn right at N Harbor Dr
4. Turn right at Nimitz Blvd
5. Continue onto Sunset Cliffs Blvd
6. Merge onto W Mission Bay Dr via ramp to Ingraham St
7. Take the ramp onto W Mission Bay Dr

### Directions from Los Angeles

1. Take I-5 South
2. Take exit 21 to merge onto Sea World Dr/  
Tecolote Rd  
Continue to follow Sea World Dr
3. Merge onto W Mission Bay Dr via ramp to  
Ingraham St/Mission Beach
4. Take the ramp onto W Mission Bay Dr

## NOTICE

This meeting will be Webcast. To view the Webcast, please visit  
[http://www.dca.ca.gov/publications/multimedia/webcast\\_current.shtml](http://www.dca.ca.gov/publications/multimedia/webcast_current.shtml).

Action may be taken on any item on the agenda. Time and order of agenda items are subject to change at the discretion of the President. Meetings of the Respiratory Care Board are open to the public except when specifically noticed otherwise in accordance with the Open Meeting Act. In addition to the agenda item which addresses public comment, the audience will be given appropriate opportunities to comment on any issue before the Board, but the President may, at his discretion, apportion available time among those who wish to speak. Contact person: Paula Velasquez, telephone: (916) 323-9983.

The meeting is accessible to the physically disabled. A person who needs a disability-related accommodation or modification in order to participate in the meeting may make a request by contacting Paula Velasquez at (916) 323-9983 or sending a written request to: Paula Velasquez, Respiratory Care Board, 444 North 3rd Street, Suite 270, Sacramento, CA 95811. Providing your request at least five (5) business days before the meeting will help ensure availability of the requested accommodation.



## **PUBLIC SESSION MINUTES**

**Friday, February 25, 2011**

**Department of Consumer Affairs  
1625 North Market Blvd.  
Sacramento, CA 95834**

**Members Present:** Larry L. Renner, BS, RCP, RRT, RPFT, President  
Barbara M. Stenson, RCP, RRT  
Lupe V. Aguilera  
Sandra Magaña  
Murray Olson, RCP, RRT-NPS, RPFT  
Richard L. Sheldon, M.D.  
Charles B. Spearman, MEd, RCP, RRT

**Staff Present:** Dianne Dobbs, Legal Counsel  
Stephanie Nunez, Executive Officer  
Christine Molina, Staff Services Manager  
Liane Freels, Staff Services Manager  
Paula Velasquez, Staff Services Analyst

### **CALL TO ORDER**

The Public Session was called to order at 9:35 a.m. by President Renner. A quorum was present.

President Renner opened by stating public comment will always be allowed on agenda items, however, under the Bagley-Keene Open Meeting Act, the Board may not take action on items brought up that are not on the agenda, but may decide to entertain the item at a future meeting. President Renner added, although not required, it would be appreciated if persons addressing the Board would state their name and organization for the record. He also advised the Board may limit public comment in order to allow sufficient time to conduct its business.

### **APPROVAL OF May 11, 2010 PUBLIC SESSION MINUTES**

1 Ms Stenson noted a correction to the May 11, 2010 Public Session minutes. The credentials for Mr.  
2 Murray were incomplete and should be updated to reflect "RCP, RRT-NPS, RPFT."  
3 Mr. Spearman moved to approve the May 11, 2011 Public Session minutes with the changes noted.  
4

5 M/ Spearman /S/Stenson

6 Unanimous: Aguilera, Magaña, Olson, Renner, Sheldon, Spearman, Stenson

7 MOTION PASSED  
8  
9

## 10 PUBLIC COMMENT

11  
12 Mr. Alan Roth, Respiratory Care Manager at Memorial Medical Center in Modesto, California, spoke  
13 about raising the minimum requirement for licensing to RRT and submitted a document for the record  
14 from CSRC in reference to that topic. Mr. Roth also spoke about the confusion between the  
15 differences in Scope of Practice for CRTs and RRTs throughout the State and individual hospitals.  
16  
17

## 18 DCA DIRECTOR COMMENT

19 *(Kim Kirchmeyer)*  
20

21 Ms. Kirchmeyer, Deputy Director for Board & Bureau Relations, appeared on behalf of Acting Director  
22 Stiger providing an update on the Department of Consumer Affairs' (DCA) current projects and issues:  
23

24 Transition: Acting Director Stiger has been asked to remain at DCA and continues to move forward  
25 with critical issues including consumer education and the Consumer Protection Enforcement Initiative,  
26 as well as the implementation of any Executive Orders.  
27

28 Hiring Freeze: On Feb 15, 2011, Governor Brown issued an Executive Order for a statewide hiring  
29 freeze which prohibits the hiring of employees. The order did provide an exemption process for  
30 positions essential to carrying out certain responsibilities, and one of those was core functions of  
31 Department statutory missions. Ms. Kirchmeyer stated DCA might fit into this exemption category.  
32 The Department will work with the boards to submit exemption requests to include justifications based  
33 upon this order. Ms. Kirchmeyer stated at this point, DCA is waiting for a Budget Letter from the  
34 Department of Finance to address several existing questions. In the meantime, the Department is  
35 asking the boards to look at existing vacancies and to review the criticality of those positions.  
36

37 Decrease in Cell Phones: On Jan 11, 2011, an Executive Order was issued calling for a statewide  
38 decrease in cell phones and smart phones by 50%. Director Stiger has made every attempt to  
39 implement this Order as soon as possible to meet this goal. The boards have submitted their  
40 reduction plans to the Department which is in the process of finalizing the reduction plan. The  
41 Department of Finance has asked for justification for any phones that may be retained. DCA is close  
42 to the 50% goal and has begun to shut off phones turned in from the boards and bureaus. Ms.  
43 Kirchmeyer thanked the Respiratory Care Board for exceeding the goal and turning in 67% of their  
44 cell phones.  
45

46 State Vehicles: This Executive Order required the Department to look at the home storage permits,  
47 withdraw those that are non-essential, and conduct an analysis to determine the purpose and  
48 necessity for all vehicles within the Department. DCA has been working with the boards and bureaus  
49 to ensure everyone complies with this order. While this order does not directly affect the Board, it is a  
50 big project for the Department.  
51

52 Expert Consultants: The Department is changing the way expert consultants are invoiced and paid.  
53 Written contracts will now be required between the boards and the individuals performing the expert

1 reviews of enforcement or disciplinary cases, as well as those assisting with exam development. The  
2 Department is asking the boards to move forward with processing contract requests with these  
3 individuals while they look at ways to streamline the process. Ms. Kirchmeyer added that the Senate  
4 Business and Professions Committee has shown some interest in possibly carrying some type of  
5 legislative remedy.

6  
7 Consumer Protection Enforcement Initiative (CPEI): With the failure of SB 1111, the Department  
8 asked legal counsel to review the bill to determine if there were any proposals that could be  
9 implemented via regulation, rather than legislation. Legal advised there were nine areas that could be  
10 implemented via regulation allowing the boards' executive officers the ability to expedite the  
11 investigation and prosecution processes. Ms. Kirchmeyer thanked the Board for moving forward with  
12 these regulations.

13  
14 Performance Measures: As part of the CPEI, the second set of performance measures has been  
15 posted to the DCA website. These measures show several critical enforcement statistics including  
16 how long it takes from the time a complaint is received until disciplinary action is taken against a  
17 licensee found in violation of the law. Ms. Kirchmeyer encouraged Board members to look at the  
18 statistics on the website and thanked the Board for including these measures in its agenda materials.

19  
20 Enforcement Program Improvement Plan: To see what improvements the boards have made in the  
21 last several months, the Department is asking for updated Enforcement Program Improvement Plans.

22  
23 BREEZE Project: This project replaces the Department's antiquated licensing and enforcement IT  
24 programs. The working session with the vendors and the boards' subject matter experts, reviewing all  
25 the requirements in the Request for Proposal, prior to entering into a contract, has been completed.  
26 Final bids are expected to be received by early March with the vendor beginning the project in August  
27 2011. The RCB is in the first phase of the scheduled roll out in December 2012. Three different  
28 workgroups were formed to work on this project: Forms Revision Workgroup, Data Conversion  
29 Workgroup, and Reports Workgroup.

30  
31 SB 1441 Uniform Standards for Substance Abusing Licensees: The Department continues to  
32 encourage the Board to implement these uniform standards and incorporate necessary language into  
33 regulations by placing them in the Disciplinary Guidelines.

34  
35  
36 **EXECUTIVE OFFICER'S REPORT**  
37 *(Stephanie Nunez)*

38  
39 Ms. Nunez reviewed the following:

40  
41 **BAGLEY-KEENE OPEN MEETING ACT UPDATE**

42 Ms. Nunez explained the most significant change relates to cell phone use during meetings.  
43 Specifically, Board members should not text or email each other during an open meeting and, if  
44 possible, limit cell phone use all together.

45  
46 **FORM 700, STATEMENT OF ECONOMIC INTERESTS**

47 Ms. Nunez stated Board members must submit their Statement of Economic Interest (Form 700) by  
48 April 1, 2011.

49  
50 **STAFFING**

51 Ms. Nunez discussed the staffing challenges over the past few years with the Executive Orders and  
52 hiring freezes. The Board currently has three vacancies that need to be filled. Efforts to move  
53 forward with a BCP did not go through, nor have exemption requests been successful. Because of

1 the challenges, CE Audits, practice related enforcement cases, and enforcement related applications  
2 are some of the areas that have been affected and are falling behind. Although efforts are being  
3 made, Ms. Nunez stated she believes eventually this will be reflected in the Board's Performance  
4 Measures.

#### 6 **TRAVEL DIRECTIVE**

7 From the Travel Directive, Ms. Nunez highlighted the following: When travelling, use the most direct,  
8 least expensive route; a taxi should only be used when travelling distances of 10 miles or less (unless  
9 justified); and no limo or car services should be used.

#### 10 **OFFICE SPACE/LEASE**

11 Ms. Nunez stated the Board has been in its current office space for about ten years (three years  
12 beyond the original lease). Because it doesn't meet State ADA requirements, the Board is required to  
13 move. Ms. Nunez stated while looking for future office space, she is trying to be frugal. However due  
14 to the rising cost in the area, a rate increase of \$27,000 – \$40,000 per year is expected, and would  
15 bring the Board's annual rent cost up to about \$163,000 - \$176,000. The Board is also requesting ten  
16 percent more space.

#### 17 **APPRECIATION FOR KENNETH R. BRYSON, MEd, RRT, CRAFTON HILLS COLLEGE**

18 Ms. Nunez expressed the Board's appreciation to Kenneth Bryson, Program Director at Crafton Hills  
19 College, for working with the Board to arrange to have the October 2010 meeting at their campus.  
20 Though the Board was forced to cancel a few weeks prior to the meeting, it recognizes the effort and  
21 difficulties Mr. Bryson went through to set up this meeting location.

#### 22 **RESPIRATORY EDUCATION PROGRAMS PASS/FAIL DATA ON WEBSITE**

23 Ms. Nunez reviewed the revised Pass/Fail data posted on the website. She added the Board  
24 received a compliment from the media for being the only respiratory licensing agency in the country to  
25 post this type of information.

26 Mr. Spearman recommended that posting this information cumulatively, as a five year average, would  
27 be more insightful especially for smaller schools. He suggested reaching this by adding information  
28 each year to the current data until achieving five years of data.

#### 29 **LICENSING FOR JOB CREATION STATISTICS**

30 Ms. Nunez summarized the Licensing for Job Creation Statistics report, supported by the  
31 administration, looking at how quickly applicants are being licensed and out into the profession  
32 working. She presented two different sets of data. One from the Department, taken from ATS (which  
33 is a system not really designed to aid this Board in capturing that data), and the other compiled by  
34 Board staff which reflects more accurate numbers.

#### 35 **ON-LINE LICENSE RENEWAL UPDATE**

36 Ms. Nunez stated a credit card license renewal system is expected to be available by April 2011. This  
37 is a temporary system not connected to any current databases and would be replaced with the  
38 BREEZE project around December, 2012. The cost to the Board will be \$4.60 per online renewal (2%  
39 of the fee), and \$1 to be paid by the licensee.

#### 40 **POLYSOMNOGRAPHY**

41 Ms. Nunez expressed a couple of different issues: The first being, the California Department of Public  
42 Health has issued memos interpreting CDPH regulations, some of which the Board does not agree  
43 with. Specifically, CDPH has stated RN's need to provide an assessment as part of a sleep study.  
44 Ms. Nunez plans to meet with CDPH to determine if this can be classified as a respiratory care  
45 service, as well as to obtain a better understanding of their determining viewpoint and what can be  
46

1 done, if anything, to change this since it does not necessarily constitute better care for California, and  
2 simply makes it more expensive.

3  
4 The second issue brought up by Ms. Nunez concerns the Medical Board's regulations implementing  
5 the registration of polysomnography technicians. The Board had requested technicians not be  
6 allowed to be grandfathered in without taking the examination. However, the decision was not up to  
7 the Medical Board. Law states polysomnography technicians can be grandfathered in with a  
8 recommendation that they have practiced safely for five years. Another request, which was rejected  
9 by the Medical Board, was that only physicians and respiratory care practitioners be permitted to  
10 supervise.

11  
12 Ms. Nunez expressed concerns about information received that the Board of Registered  
13 Polysomnography Technologist (BRPT), who provides the technician exam, was contacted by the  
14 American Academy of Sleep Medicine (AASM) requesting it make the exam easier to allow for  
15 increased passing scores.

### 16 17 18 **PUBLIC COMMENT**

19  
20 Jack McGee, Government Affairs Committee Chair, California Society for Respiratory Care, inquired  
21 as to why vacancies are an issue since the Board is sustained by licensing fees.

22  
23 President Renner responded, that even though the Board is essentially independent, it is still required  
24 to act under the directives or Executive Orders provided by the Governor and the Administration. The  
25 Board's staff members are State employees. Since there is a hiring freeze, those regulations and  
26 Executive Orders must be followed.

27  
28 Mr. McGee inquired if the funds remained earmarked for Respiratory Care Board operations, to which  
29 Ms. Nunez replied affirmatively.

### 30 31 32 **RECORD RETENTION POLICY**

33 *(Stephanie Nunez)*

34  
35 Ms. Nunez reviewed the proposed policy which was based on the Department's Electronic Data  
36 Retention Policy. The BREEZE project, and the development of a new database, prompted the  
37 Department's request for boards and bureaus to establish a record retention policy to limit the number  
38 of records that may need to be transferred. Ms. Nunez expressed her hesitancy to purge electronic  
39 records in an attempt to preserve historical reference, and suggests these records be kept for 60  
40 years. She also stated the policy can be revisited once the BREEZE system is in place when other  
41 means of storing information might be available. Ms. Nunez is requesting the Board retain all  
42 enforcement files and purge some hard files, namely, cancelled, retired and deceased preserving only  
43 the application.

44  
45 Discussion ensued.

46  
47 Dr. Sheldon moved to accept the retention schedule as presented.

48  
49 M/ Sheldon /S/Olson

50 Unanimous: Aguilera, Magaña, Olson, Renner, Sheldon, Spearman, Stenson

51 MOTION PASSED

1 **FISCAL REVIEW**

2 *(Larry Renner)*

3  
4 President Renner reviewed revenue and expenditures identifying no notable differences in expenses  
5 versus revenues. He added the upcoming change in lease space will have an impact on expenditures  
6 in the future.

7  
8 Dr. Sheldon inquired whether the Board is staying within budget.

9  
10 Ms. Nunez replied the only issue has been increased costs with the Attorney General's office. The  
11 Board normally uses Legal Assistants for most cases but, as their time is limited, some cases have to  
12 be assigned to Deputy Attorneys General. The Senior Assistant Attorney General has agreed to work  
13 with the Board to reorganize some cases to reduce costs. Ms. Nunez added the Board is well within  
14 its overall budget.

15  
16 Discussion ensued.

17  
18  
19 **ENFORCEMENT STATISTICS**

20 *(Charles Spearman)*

21  
22 Mr. Spearman commented that the Board's enforcement statistics are in line with prior years. Fines  
23 imposed appear to have dropped down to a more normal level unlike last fiscal year and consistent  
24 with prior years.

25  
26 Dr. Sheldon asked for data listing the main reasons for enforcement action taken against respiratory  
27 care practitioners.

28  
29  
30 **PERFORMANCE MEASURES**

31 *(Stephanie Nunez)*

32  
33 Ms. Nunez reviewed results for the second quarter report showing the Board's progress toward  
34 meeting its enforcement goals:

35  
36 Volume – Number of complaints and convictions received // Average: 69

37  
38 Intake – Average cycle time from complaint receipt, to the date the complaint was assigned to an  
39 investigator. // Target: 7 days, Average: 2 days

40  
41 Intake & Investigation – Average cycle time from complaint receipt to closure of the investigation  
42 process. Does not include case sent to the Attorney General or other forms of formal discipline. //  
43 Target: 210 days, Average: 119 days

44  
45 Formal Discipline – Average number of days to complete the entire enforcement process for cases  
46 resulting in formal discipline (includes intake and investigation by the Board and prosecution by the  
47 AG) // Target: 540 days, Average: 582 days (this result is not within the Board's control).

48  
49 Probation Intake – Average number of days from monitor assignment to the date the monitor makes  
50 first contact with the probationer. // Target: 6 days, Actual: 2

51  
52 Probation Violation Response – Average number of days from the date a violation of probation is  
53 reported to the date the assigned monitor initiates appropriate action. // Target: 10 days, Actual: 1 day



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Dr. Sheldon suggested maintaining some control over the performance measure questions to ensure the proper measures are being tracked and reflected as it has been his experience, in healthcare, patient expectations are frequently not based on reality so questions framed around those expectations score extremely low.

Discussion ensued.

Ms. Stenson requested the posting of this information on the Respiratory Care Board’s website.

Ms. Nunez stated this information is currently listed on the Department’s website but agreed to add a link on the Board’s website as well.

**PROPOSED REGULATORY LANGUAGE**

**NEW AND AMENDED LANGUAGE RELATED TO: DISCIPLINARY GUIDELINES, PROCESSING TIME AND CLEAN UP**

*(Stephanie Nunez)*

Ms. Nunez reviewed, in detail, the proposed new and amended language related to the Disciplinary Guidelines, Uniform Standards, citations and fines, education waiver, application processing time and clean up.

Inquiries and discussion ensued throughout review of the revisions.

President Renner requested changing the word “hospitals” under §1399.364, Orders, to the phrase “licensed health care facility”

Further discussion ensued.

Dr. Sheldon moved to move forward with the regulatory language with revisions.

M/ Sheldon /S/Stenson

Unanimous: Aguilera, Magaña, Olson, Renner, Sheldon, Spearman, Stenson

MOTION PASSED

**PROBATION TERM, RESTRICTION OF PRACTICE: TRANSPORT**

*(Murray Olson)*

As part of the revisions to the Disciplinary Guidelines, Mr. Olson expressed the extreme importance of the Restriction of Practice prohibiting probationers from working as part of a transport team. Mr. Olson added being a member of a transport team is an advanced practice, often without a physician present, and where opportunity for the most harm exists.

**PROBATION MONITORING DRUG TESTING FREQUENCY**

*(Stephanie Nunez)*

Ms. Nunez followed up on concerns from previous meetings regarding the annual number of drug tests for probationers established by the SB1441 uniform standards (104 times for the first year and 52 for subsequent years). Ms. Nunez explained the Uniform Standard #4 Subcommittee would be

1 meeting March 9, to discuss testing frequency, where a final determination is expected with a different  
2 proposed schedule. She added, as of March 1, 2011, the Board has changed its testing requirements  
3 for probationers to a minimum of 24 times per year.  
4

5 Discussion ensued.

6  
7 Mr. Spearman stated, as discussed before, recognizing the need for public and patient safety, 104  
8 and 52 seem like an excessive number of tests considering the cost and the moderate income of  
9 RCPs. He added, randomly applied, it would seem to have some deterrent effect so the lower  
10 number should theoretically be effective.  
11

12 Ms. Nunez responded the subcommittee is reviewing statistical data on the amount of drug use and  
13 the frequency of testing and what is reasonable and effective.  
14

## 15 **DISCIPLINE & PROBATION MONITORING COST RECOVERY**

16 *(Sandra Magaña)*  
17

18  
19 Ms. Magaña asked for clarification on how cost recovery in cases of hardship is handled (either at  
20 staff or board level), if fees can be waived or discounted, and if there has been an increase in  
21 unrecovered costs.  
22

23 Ms. Nunez responded that fees can be extended, not eliminated and the actual policy of cost recovery  
24 it set by the Board as determined by its members. She added most unrecovered costs come from  
25 licenses that have been revoked or surrendered. In those cases, they are sent to a collection agency  
26 where recovery can sometimes occur. The majority of costs recovered comes from probationers.  
27

## 28 **CALIFORNIA COLLEGE, SAN DIEGO PROGRESS REPORT**

29  
30  
31 Bob Goodrow (Program Director, California College San Diego) and Laura Brown (Consultant on  
32 behalf of the California College of San Diego) addressed the Board.  
33

34 Ms. Nunez began by stating this was a progress report, and noted transcripts and reports have been  
35 submitted to the Board's office as requested with no issues.  
36

37 Inquiries and discussion ensued between the Board and the CCSD representatives.  
38

39 Ms. Brown requested CCSD be relinquished from the mandate of reporting to the Respiratory Care  
40 Board and transition to oversight by the Bureau for Private Postsecondary Education (BPPE).  
41

42 Dr. Sheldon moved that the requirements of the Board for reporting purposes be terminated at this  
43 time.  
44

45 Ms. Nunez asked CCSD to continue to send the coordinating catalogue with each transcript as this  
46 has been of great help to staff.  
47

48 Mr. Goodrow agreed stating this is now part of the process as a matter of "best practices."  
49

50 President Renner encouraged CCSD to move forward with the improvement items suggested by the  
51 Board, including an updated system.  
52

53 M/ Sheldon /S/Aguilera

1 Unanimous: Aguilera, Magaña, Olson, Renner, Sheldon, Spearman, Stenson  
2 MOTION PASSED

3  
4  
5 **CLOSED SESSION I**

6  
7 The Board convened into Closed Session, as authorized by Government Code Section 11126c,  
8 subdivision (3) at 12:41 p.m. and reconvened into Public Session at 1:22 p.m.  
9

10  
11 **“TRANSITIONING THE RESPIRATORY THERAPIST WORKFORCE FOR 2015 AND BEYOND”**  
12 **RECOMMENDATIONS – DISCUSSION**  
13 *(Charles Spearman)*  
14

15 Mr. Spearman, who attended the three “Transitioning the Respiratory Therapist Workforce for 2015  
16 and Beyond” conferences, reviewed a memo from Sam Giordano, Executive Director for the AARC,  
17 that went out to the people who participated in the input sessions. Mr. Spearman explained these  
18 meetings were to help move the profession to where it needs to be for 2015 and beyond.  
19

20 Mr. Spearman reviewed some of the recommendations to come out of the meetings stating these are  
21 simply recommendations for the AARC Board of Directors. They are not meant to occur immediately,  
22 if at all, and will involve other agencies.  
23

24 The following topics were discussed:

- 25
- 26 • Baccalaureate degree required as entry level to Respiratory Therapy.
- 27 • RRT requirement for licensure as a respiratory therapist (discontinuing use of the CRT exam  
28 and combine the exam components into the RRT exam).
- 29 • AARC to form a commission to assist state regulatory boards in transitioning to an RRT  
30 requirement for licensure.  
31

32 President Renner stated that in order for this to be successful for California licensure, two things need  
33 to be considered:

- 34
- 35 1. Educating the existing licensees, and
- 36 2. Working with the NBRC to establish one entry-level exam.  
37

38 Discussion ensued.

39  
40 Mr. Spearman suggested Board members read the article to be published in the May 2011 AARC  
41 journal to get more facts and detail. At some point, the Board may need to decide whether to give its  
42 support or recommendations.  
43

44 Further discussion ensued.

45  
46 Ms. Nunez offered to put this topic on the next meeting agenda, after making sure each member has  
47 received a copy of the manuscript. She also offered to provide information on what administrative  
48 changes would be needed, including a proposed timetable.  
49

50  
51 **PUBLIC COMMENT**  
52

1 Mr. Roth commented that CoARC (Commission of Accreditation for Respiratory Care) has posted its  
2 objection to the baccalaureate degree requirement on its website.

3  
4 Discussion ensued.

### 5 6 **ELECTION OF OFFICERS**

7  
8 Ms. Stenson moved to nominate Larry Renner for the office of President. No other nominations were  
9 received.

10 M/ Stenson/ S/ Spearman  
11 Unanimous: Aguilera, Magaña, Olson, Renner, Sheldon, Spearman, Stenson  
12 MOTION PASSED  
13

14  
15 Ms. Stenson moved to nominate Murray Olson for the office of Vice President. No other nominations  
16 were received.

17  
18 M/ Stenson/ S/ Renner  
19 Unanimous: Aguilera, Magaña, Olson, Renner, Sheldon, Spearman, Stenson  
20 MOTION PASSED  
21

### 22 23 **CONSIDERATION TO CONTRACT SERVICES TO ESTABLISH BOARD RECOMMENDED** 24 **BENCHMARKS**

25  
26 Ms. Nunez inquired whether the Board was interested in pursuing the topic of establishing  
27 recommended ratios of respiratory therapist to patients for different tasks and explained the possible  
28 benefits.

29  
30 President Renner suggested first collecting data about current staffing.

31  
32 Dr. Sheldon inquired whether the Board could ask the CSRC to develop recommendations.

33  
34 President Renner requested staff contact CSRC to address this at their convention in May.  
35

### 36 37 **LEGISLATION OF INTEREST**

38 *(Larry Renner)*  
39

40 President Renner recommended the following positions on legislation of interest:

41  
42 AB 569 - Watch  
43 AB 958 - Oppose unless amended  
44

45 Ms. Magaña moved the Board accept those positions as recommended.

46  
47 M/ Magaña /S/ Spearman  
48 Unanimous: Aguilera, Magaña, Renner, Sheldon, Spearman  
49 MOTION PASSED  
50

### 51 52 **MEETING CALENDAR – SCHEDULE MEETING DATES** 53

1 The Board considered and agreed upon the following meeting dates:

2

3 Tuesday May 10, 2011

4 Friday, October 7, 2011

5

6

7

**PUBLIC COMMENT ON ITEMS NOT ON THE AGENDA**

8

9 No public comment was received.

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**ADJOURNMENT**

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15 The Public Session Meeting was adjourned by President Renner at 2:26 p.m.

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24 \_\_\_\_\_  
LARRY L. RENNER

25 President

26

27

\_\_\_\_\_  
STEPHANIE A. NUNEZ

Executive Officer

**Respiratory Care Board of California**  
**PROPOSED**  
**PROBATION MONITORING**  
**DRUG TESTING FREQUENCY POLICY**  
*Effective: July 1, 2011*

Pursuant to section 3701 of the Business and Professions Code, the Respiratory Care Board is mandated "...to protect the public from the unauthorized and unqualified practice of respiratory care and from unprofessional conduct by persons licensed to practice respiratory care." Further, section 3710.1 provides that "consumer protection shall be the highest priority" for the Board and that "whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount."

In line with Uniform Standards developed as a result of SB 1441 (statutes of 2008), the Board is adopting this policy concerning drug testing frequency for persons whose licenses have been placed on probation. The Board understands its role, first and foremost, is to ensure patient safety and the only alternative to moving forward with increasing the frequency of testing, that will give reasonable assurance for consumer protection, is revocation or surrender of the license of a person who has demonstrated possible substance abuse or dependence. Effective July 1, 2011, the following frequency standards shall be in effect:

**ORDERS EFFECTIVE PRIOR TO JULY 1, 2011**

Probationers with an order effective prior to July 1, 2011, shall be tested a minimum of 36 times per year. Some probationers may be tested as much as 104 times or more per year, as appropriate and as determined by Board staff.

**STANDARD TESTING FREQUENCY SCHEDULE (Orders Effective On or After July 1, 2011)**

Probationers with an order effective on or after July 1, 2011, shall be tested a minimum of 52 times per year during the first year and a minimum of 36 times each year, thereafter. Some probationers may be tested as much as 104 times or more per year, as appropriate and as determined by Board staff.

- The Board may order a licensee to drug test at anytime.
- Each licensee shall be tested RANDOMLY in accordance with the schedule below:

Segments of Probation/Diversion	Minimum Range of Number of Random Tests
Year 1	52-104 per year
Year 2+	36-104 per year

\*The minimum range of 36-104 tests identified in "Year 2+," is for the second year of probation and each year thereafter.

## **EXCEPTIONS**

### **Previous Testing/Sobriety**

In cases where the Board has evidence that a licensee has participated in a treatment or monitoring program requiring random testing, prior to being subject to testing by the Board, Board staff may give consideration to that testing in altering the testing frequency schedule so that it is equivalent to the standard frequency schedule.

### **Not Employed in Health Care Field**

At the discretion of Board staff, testing frequency may be temporarily reduced, to no less than 12 times per year, for probationers who are not employed in any health care field. However, any temporary reduction will not toll a complete year of testing 52 times per year for those orders effective on or after July 1, 2011. Further, prior to returning to employment in a health care field, the probationer shall first receive approval from his/her probation monitor. Prior to returning to employment in any health care field, the probationer shall be tested a minimum of 8-12 times within a 60 day period, immediately prior to returning to employment.

### **Violation(s) Outside of Employment**

An individual whose license is placed on probation for a single conviction or incident or two convictions or incidents, spanning greater than seven years from each other, where those violations did not occur at work or while on the licensee's way to work, where alcohol or drugs were a contributing factor, may be tested 36-104 times per year for every year of probation (bypassing the first year minimum requirements), as determined by Board staff.

### **Tolling**

The board will postpone all testing for any person whose probation is placed in a tolling status, if the overall length of the probationary period is also tolled. A licensee shall notify the board upon the licensee's return to California and shall be subject to testing as provided herein.

## **COSTS**

Probationers continue to be responsible for all associated testing costs. However, Board staff may extend due dates for repayment of cost recovery and monthly probation monitoring fees, if evidence of hardship exists.

## **MAJOR VIOLATIONS**

The following major violations, taken from the Board's Disciplinary Guidelines (2011 Edition), will likely result in increased testing frequency, in addition to any other action taken by the Board (e.g. order to cease practice, pursuit of revocation of the license):

1. Any act that presents a threat to a patient, the public, or the respondent him/herself;
2. Failure to timely complete a board-ordered program or evaluation;

3. Committing two or more minor violations of probation;
4. Practicing respiratory care or making patient contact while under the influence of drugs or alcohol;
5. Committing any drug or alcohol offense, or any other offense that may or may not be related to drugs or alcohol, that is a violation of the Business and Professions Code or state or federal law;
6. Failure to make daily contact as directed, submit to testing on the day requested, or appear as requested by any Board representative for testing, in accordance with the "biological fluid testing" term and condition;
7. Testing positive for a banned substance;
8. Knowingly using, making, altering or possessing any object or product in such a way as to defraud a drug test designed to detect the presence of a banned substance;
9. Failure to adhere to any suspension or restriction in practice;
10. Falsifying any document in connection with the terms and conditions of probation.

#### **PETITIONS FOR REINSTATEMENT**

Nothing herein shall limit the Board's authority to reduce or eliminate the standards specified herein pursuant to a petition for reinstatement or reduction of penalty filed pursuant to Government Code section 11522 or statutes applicable to the board that contains different provisions for reinstatement or reduction of penalty.

Adopted this 10<sup>th</sup> day of May, 2011.

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Larry L. Renner, President  
Respiratory Care Board of California



## DRUG TESTING PROPOSED AMENDMENTS - RATIONALE

March 9, 2011

Uniform Standard #4, adopted by the Uniform Standards Committee in 2009, provides that any person subject to testing shall be tested a minimum of 104 times (an average of 2x/week) the first year and no less than 50 times, every year thereafter. The Uniform Standard #4 Subcommittee was established to revisit this standard to determine if it was the most pragmatic approach, given additional considerations, and provide a recommendation to the full Uniform Standards Committee for consideration.

According to the analysis of SB 1441, the drive to establish standards was to maintain public confidence in different healthcare licensing boards' *"diversion programs."* The author stated the bill was necessary to "ensure that public safety remains the paramount mission of healing arts licensing boards when dealing with licentiates who are suffering from drug or alcohol *abuse* or *dependency* problems." "The impetus for this bill [was] the repeated failures of the MBC's Physician Diversion Program (PDP), and the immediate and grave risks to the public posed by physicians who continue to practice medicine despite their chemical dependency." Some additional noted factors were: failure to respond to potential relapses timely; failure to require a physician to immediately stop practicing medicine, after testing positive; 26% of tests were not done as randomly scheduled, and failure to have a method to formally evaluate its collectors, group facilitators and diversion evaluation committee members to determine whether they are meeting program standards. In addition, the author pointed out that "no audit or review has been conducted on the other health care licensing boards that maintain and operate their own *diversion programs* for licensees that suffer from chemical *dependency* or on the singular program (e.g. Maximus) which administers the diversion programs... ."

One of the most difficult hurdles in establishing Uniform Standards for all health boards, is the fact that there are numerous boards/bureaus, each with their own methodology and approach to discipline and for a handful of boards/bureaus, this includes rehabilitation or diversion programs.

Health care boards with diversion programs find their programs successful in providing immediate intervention for licensees whose substance abuse has not risen to the threshold of actual harm to the public. The diversion programs provide immediate removal from the practice, while the licensee focuses on recovery. Diversion provides a mechanism for immediate evaluation, treatment, monitoring, support, and recovery of the licensee.

For some boards, revocation or surrender of the license is the only option for high risk cases (under the influence while at work, numerous alcohol/drug convictions or acts). These boards establish their role solely as a Consumer Protection agency and do not find that it is their role, nor are they the best qualified, to provide rehabilitative efforts. Some may also believe that a licensee's commitment to recovery and maintaining sobriety will be stronger, if that licensee seeks rehabilitation and establishes a support base on his/her own accord. Following the revocation/surrender of a license, most licensees may return to the board requesting reinstatement after a period of one year. At that time, he/she may provide evidence and

testimony of rehabilitative efforts. Generally, if reinstatement of the license is granted, the licensee will be tested for a set period of time. With that being said, it is possible that an underlying substance abuse problem may exist even for a person who may only have two convictions or acts, that result in probation.

While there is no shortage of compassion for the licensee in regard to his/her struggles with alcohol or drug abuse or addiction and the financial liabilities of testing, boards/bureaus understand that their role, first and foremost, is to ensure patient safety. Alcohol and drug violations or violations where alcohol/drugs were a contributing factor, may be indicative of a more serious substance abuse problem. The only alternative in these high risk cases is revocation or surrender of the license.

The proposed amendments to Uniform Standard #4, were developed based on:

- \* An article published in the Journal of Addictive Diseases in 2003, titled "Simulation of Drug Use and Urine Screening Patterns,"<sup>1</sup>
- \* The Diagnostic and Statistical Manual of Mental Disorders,<sup>2</sup> with consideration given to risk factors associated with health care workers, and
- \* The testing frequency of physicians in 35 other states who reported this data to the Federation of State Physician Health Programs, Inc. (attached).

The article published in the Journal of Addictive Diseases in 2003, titled "Simulation of Drug Use and Urine Screening Patterns" is referenced in numerous documents including the "Physician Health Program Guidelines," developed by the Federation of State Physician Health Programs, Inc., and published in 2005. The abstract for this article provides:

"Urine drug screens are used extensively in substance abuse treatment, especially methadone maintenance treatment programs, as well as criminal-justice and clinical research settings. While positive urinalysis generally indicates drug use, no information is provided about the context or pattern of use. A computer generated model was created to examine the influence of drug use patterns and drug screen schedules upon urine test results. The results indicate that (1) when urine testing is performed at a rate of eight times per year, the probability of testing positive in a given month is little better than 50-50 even for daily use, (2) infrequent drug use is difficult to detect regardless of drug testing frequency, and (3) the benefits of more frequent drug testing are greatest with moderate drug use. The data presented provides a guide for clinicians to match drug screen schedules to frequency or pattern of suspected drug use."

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<sup>1</sup> Crosby, Ross D. , Carlson, Gregory A. and Specker, Sheila M. (2003) 'Simulation of Drug Use and Urine Screening Patterns', Journal of Addictive Diseases, 22: 3, 89 — 98

<sup>2</sup>American Psychiatric Association: *Diagnostic and Statistical Manual of Mental Disorders*, Fourth Edition, Text Revision. Washington, DC, American Psychiatric Association, 2000.

As published in this article, through a computer-generated model, the *mean average days to a positive urine test* considering the frequency of drug use vs. the frequency of urine testing, was developed. Below are those tables for substances that can be detected within a 1) 24 hour window (e.g. alcohol) and 2) 72 hour window (most other drugs).

	24-Hour Detection Window Urinalysis Frequency					72-Hour Detection Window Urinalysis Frequency				
	2x/wk	1x/wk	2x/mo	1x/mo	8x/yr	2x/wk	1x/wk	2x/mo	1x/mo	8x/yr
Every Day	3	7	15	30	46	3	7	15	30	46
Every Other Day	7	14	31	59	93	4	8	18	35	51
2x/week	12	24	51	110	152	5	11	23	48	71
1x/week	23	46	102	219	323	9	18	40	80	118
2x/month	52	108	305	437	670	19	39	91	160	272
1x/month	107	193	403	781	1625	36	71	150	306	560

In principal, testing a licensee an average of two times per week sounds like a sound practice to detect alcohol/drug use. However, the number of days substance use is detected in the more chronic user (and therefore, in most scenarios, the greater the risk) varies much less, regardless of the frequency of testing. One could make the argument that this is evidence for more frequent testing. However, given consideration to the risk factor of a person who uses once a month or less, the importance of “randomness” in testing, and the need to find a reasonable and pragmatic approach, this solution would appear to be implausible.

When this standard was initially established, there were several issues that had not been considered. This paper will address some of those issues, including random testing, sobriety, disparity of substance use, feasibility, and potential outcomes.

### Random Testing

The current standard of testing 104 times per year and 50 times each year thereafter, diminishes the most key component in testing: randomness. Random is defined as without definite aim, direction, rule or method. It is clearly established that if a person can gauge when they will be tested, they will consider one or more days a “safety period” following the submission of a biological sample for testing. Therefore, it is key that some testing be done back-to-back, as well as, at different intervals. Proposing a specific number of tests, and publicly announcing those figures, provides active users, a much more reliable “safety period” to use, especially for alcohol and any other drugs that stay in the system less than three days. By establishing a minimum standard *range*, and diligently employing “randomness” in testing, the “safety period” is diminished. It is critical with any Testing Frequency Schedule, that testing is done without regular intervals or patterns.

### Sobriety

There are also cases where a person who is an admitted recovered substance abuser or addict, has already participated in a rehabilitation program before entering diversion or being placed on probation. In cases where there is evidence that the person has been randomly tested and has maintained sobriety, some flexibility should be granted to the board in determining the duration of high frequency testing, that is equivalent to the proposed testing schedule.

### Disparity in Substance Use

As suggested in the analysis of SB 1441, consideration should also be given to licensees who the board has reason to believe pose a risk to patients and those where the risk is speculative.

Many, if not all, boards/bureaus pursue disciplinary action for single violations (e.g. single conviction for marijuana use, DUI, discipline in another state for minor violations, etc...) or violations that occur outside of the work place. Failure to acknowledge the great disparity in a single conviction vs. an admitted user and the testing requirement employed thereof, may have negative consequences. Applying the same rigid standard for both low and high risk testers is not equitable, nor was it the intent or driving force for SB 1441. It is possible that a shift may occur over a period of time, where some boards/bureaus find an alternative, lesser form of discipline in these cases, that does not include drug testing. Weighing the intrusive and financially burdensome testing requirements with the cause for action, testing may be found to be far reaching and overzealous.

According to the *Webster's New World Medical Dictionary, Third Edition*, "There is no universally accepted definition of substance abuse." However, a definition of substance abuse that is frequently cited is that in DSM-IV, the fourth edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM) issued by the American Psychiatric Association. The DSM-IV defines, in summary, "substance abuse" as recurrent or continued substance use despite negative consequences.

While a single occurrence of a person under the influence on the job or driving under the influence, by itself would not classify that licensee with "substance abuse," the fact that our role as a consumer protection agency has a direct correlation to a person being under the influence on the job, creates a greater concern. Whereas a person driving under the influence (outside of work) is considered a lower risk because it indicates a misuse of alcohol *and* does not directly impact the safety of patients in the person's role as a health care provider. In addition, most individuals do not repeat this behavior after a single incident that results in negative consequences.<sup>3</sup>

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<sup>3</sup>DSM-IV sites, "At some time in their lives, as many as 90% of adults in the US have had some experience with alcohol, and a substantial number (60% males and 30% females) have had one or more alcohol-related adverse life events (e.g. driving after consuming too much alcohol, missing school or work due to a hangover). Fortunately, most individuals learn from these experiences to moderate their drinking and do not develop Alcohol Dependence or Abuse."

## Feasibility

Drug testing costs have been another area of concern expressed by many. While costs should not deter a board/bureau from carrying out its highest priority of consumer protection, they must be given some weight of consideration, in the application of testing frequency. Costs are identified in the chart below. Boards/bureaus have the option of passing this cost on to those who directly incur the charges, or they may use fees collected from the general licensee population to cover all or a portion of the costs.

TESTING COSTS	Urine Analysis	Collection Fee	Totals
<b>Current Rate</b>	\$30-\$58 per test	\$20-\$30	\$50-\$88 each
Total Cost for First Year at 104x year	\$3120 - \$6032	\$2080-\$3120	\$5200-\$9152
Total Cost for First Year at 104x year X 20 New Probationers	\$62,400-\$120,640	\$41,600-\$62,400	\$104,000-\$183,040

Testing a probationer 104 times the first year, would currently cost approximately \$7,200 per each probationer. Keep in mind, that many probationers are required to repay discipline costs in the first year of probation that can range greatly. In addition, some boards require probationers to pay a monthly monitoring fee. It is realistic to believe, that all these fees could total \$1000 a month and it is likely, a great deal more for several boards. While the position that probation is a final opportunity to regain clear licensure, and that costs should bear no weight, there are a number of factors that should be considered:

- \* The disparity in income levels of allied health professionals vs. registered nurses and physicians.
- \* Licensees who are unemployed.
- \* Licensees who are tolling.
- \* Administrative Law Judge's and each board's willingness to revoke a licensee based on the sole violation that the license is unable to pay for testing, and the financial repercussions should board's absorb these costs.

The disparity in income levels for many allied health professionals vs. physicians is great. It is estimated that some allied health professionals have annual salaries near \$50,000, and to the extreme other end, physicians may have a salary near or over \$200,000. While this should not necessarily effect frequency in testing, it should be considered by boards in whom pays for testing.

There are also licensees in every profession, whether on probation or in a diversion program, who are unemployed or tolling (residing out-of-state). These people pose no immediate threat to the public or California consumers, and a method of extending the time period for testing should be considered.

For some boards, probationers are required to provide a credit card number to the drug testing contractor, which is billed for every test. Probationers pay the collection fee, at the time they provide a specimen. If payment is not made, the contractor will no longer test the probationer. Of course, many boards should attempt to test such probationers if they continue to practice, but

many lack the resources to maintain a high frequency of testing. [SB 1172, statutes of 2010, also provides a mechanism for boards to suspend a probationer or a person in diversion for failing to test or testing positive, that may be implemented by each board in the near future].

Testing 104x a year, may result in a probationer's non participation in the testing program. Many boards will be forced to send the case to the Office of the Attorney General to pursue revocation for a probationers' failure to adhere to the Biological Fluid Testing term and condition.

For example, let's look at a board who licenses lower salaried allied health personnel, that may have 65 probationers subject to biological fluid testing, at any given time. While existing probationers may not be subject to the first year requirements, up to 20 new probationers established each year, will be subject to new testing requirements.

It is realistic to believe that at least half, if not more, will not be able to afford testing 104x a year, resulting in the pursuit of revocation of the license. Therefore, it is estimated that this board will incur the prosecution and hearing costs associated with revoking ten probationers, for an annual cost of an estimated \$50,000. These costs do not take into account the staff resources needed to process these cases.

Further, it is uncertain, if at hearing, an Administrative Law Judge, or even the board itself, for that matter, would revoke the individual, if cost is the sole basis for revocation. If an extension of probation is ordered, it will only set the probationer up for failure, as he/she will still not be able to afford the testing. Or it could be ordered that the probationer is not responsible for the costs, to which the board would then need to pay these additional costs, after already incurring costs for prosecuting the violation. This would result in additional layers of bureaucracy and costs, not serve the public or the licensee, and be completely inefficient. Further, the inequity, would raise additional issues with other probationers who are paying the costs.

Therefore, the many boards who have passed testing costs on to the licensees, may find it difficult to achieve any form of resolution, if in fact, licensees are being further disciplined, solely because they cannot pay testing costs.

#### Potential Outcomes

Implementing the existing standards of testing 104 x the first year and 50 x each year thereafter, could have irrevocable effects. There is no evidence or even the suggestion of evidence to provide that implementing the existing standard will provide the greatest benefit to consumers.

Immediate implementation of these standards could result in greater substance abuse due to lack of randomness, lesser discipline for minor violations, and greater bureaucracy, that would likely result in fee increases for all boards. None of California's boards come close to testing any probationer 104 x a year and therefore, there is no means to reasonably assert projected reliability or effectiveness.

However, should boards need to increase their fees to sustain a drug testing program in the future, they may consider legislation that specifically raises a fee to fund their drug testing program.

## RECOMMENDATIONS

1. **Recommendation:** Establish minimum testing frequency “ranges” and clear standards to secure the “random” component of a testing program and provide boards flexibility in assessing the level of risk.

Establishing minimum standard “ranges” will diminish a licensee’s ability to anticipate when testing will occur. Clearly, the frequency of testing should be increased for any person the board suspects is currently using or has had a lapse in sobriety for a minimum of a year<sup>4</sup>, and where that board does not pursue immediate suspension or expeditious revocation of the license. In such cases, testing may actually exceed the minimum range. In any case, the proposed standards should include specific instruction to maintain an effective “random” testing program.

2. **Recommendation:** Provide an exception that allows boards flexibility in determining the duration of high frequency testing, equivalent to the proposed testing frequency schedule, in cases where there is evidence that the person has been randomly tested and has maintained sobriety for a length of time. No greater purpose is served by requiring a licensee to undergo the same level of testing when he/she has already participated in a bona fide program. In fact, failure to recognize equivalent testing standards may be punitive and may have negative repercussions.
3. **Recommendation:** Provide an exception from the standard testing frequency schedule, for those isolated incidents that occur outside and unrelated to the workplace and span a great period of time. This will provide some equity in applying standards for low risk candidates and prevent potential repercussions mentioned previously.
4. **Recommendation:** Provide an exception and extension for persons tolling or who are unemployed. These licensees pose no threat to California consumers. Failure to recognize this may appear punitive and result in adverse outcomes.
5. **Recommendation:** Collect useful and reliable data for a three-year period following implementation, to review the outcomes and effectiveness of this standard and determine if amendments are appropriate. There was no evidence, scientific or otherwise, to support the original standards. These proposed standards are based on some research, yet the real outcomes are unknown. Given the numerous unknown outcomes and the potential adverse effects, it is key to responsible government, to measure and review real data and experiences to determine the effectiveness of this standard.

In summary, the existing uniform standard #4 is premature, unfounded, rigid, and inequitable on many levels. There is clearly potential for serious consequences. It is clear there are a number of interested parties on both sides of this issue, though all are passionate about consumer

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<sup>4</sup>The Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition (DSM-IV), cites, “Because the first 12 months following Dependence is a time of particularly high risk for relapse, this period is designated “Early Remission” and “During the first 12 months after the onset of remission, the individual is particularly vulnerable to having a relapse.”

protection. The proposed amendments provide a compromise from both ends of the spectrum, with the condition to revisit the issue with real data, three years following implementation to determine if amendments are necessary. The proposed amendments are a responsible and reasonable approach to prevent adding layers of bureaucracy, scapegoats, and misfortunes, while providing greater consumer protection. The proposed amendments are a significant leap, specifically in increasing frequency, for many, if not most boards. If acted upon in good faith, while collecting appropriate data, together, we can achieve the most effective standard to protect consumers.



## **IN-HOUSE REVIEW / PENALTY DETERMINATION**

In order to promote cost effectiveness and ensure the availability of funds to prosecute high priority complaints, the Board adopted the following guidelines for Respiratory Care Board staff in reviewing criminal history for applicants and licensees on February 22, 2002.

These are merely in-house guidelines and do not preclude the Board from imposing a different form of discipline. The goal of the in-house review program is to reduce the costs of the Board's enforcement function by providing for proposed discipline with a minimal amount of investigation, staff, attorney and judicial resources, while at the same time carrying out the mission of the Board.

### **Violation Types**

- FRAUD (which can include welfare and other government fraud and misrepresentation and conspiracy to commit fraud);
- THEFT (which can include petty theft, receiving stolen property and trespass);
- ALCOHOL (which can include DUI, reckless driving, public intoxication and other use in violation of law);
- DRUGS (which can include use, possession, and possession for sale);
- BODILY INJURY (which can include domestic violence, assault, battery and attempted battery).

Only the above related offenses qualify for in-house review and determination of penalty as long as no other disqualifying factors or extenuating circumstances are present.

To qualify for in-house review and determination of penalty, the following criteria must be met for the particular offense or applicant:

1. Violations (with the exception of drug offense) must be misdemeanors.
2. A child must not be the victim of the offense.
3. The violation must not have occurred during employment as a health care worker.
4. Bodily injury resulting from the offense must not be to an unknowing victim, innocent bystander or defenseless person.
5. Bodily injury resulting from the offense must not have been the result of premeditation.
6. The offense must not have been extremely violent in nature, and must not have involved harassment or stalking.
7. Felony drug or alcohol offenses may qualify for in-house review and determination of penalty.

Where staff is in doubt as to the propriety of in-house review, the issues presented and the suggested discipline are to be addressed pursuant to previously established enforcement processes. Cases not qualified for this review will be reviewed individually and on a case-by-case basis for suggested discipline.

(continued)

## APPLICANT PENALTY DETERMINATION GUIDELINES

No.	Case Type	Proposed Resolution
A-1	One (1) violation older than two (2) years from the date the application is received - excluding drugs	Strong Warning Letter
A-2	Two (2) violations older than five (5) years from the date the application is received - excluding drugs	Strong Warning Letter
A-3	Any violation(s) that does not meet the qualifications in numbers A1-A2	Citation and Fine or Probation
A-4	Multiple violations that show patterned behavior and at least two (2) violations showing that patterned behavior must have occurred within three (3) years from the date that application for licensure is received	Denial
A-5	Perjury on any Respiratory Care Board form that conceals any violation or would in anyway benefit the applicant	Citation and Fine, Probation or Denial

A single incident or occurrence represents one violation.

## LICENSE PENALTY DETERMINATION GUIDELINES

No.	Case Type	Proposed Resolution
L-1	One (1) violation (within 7 years) - excluding drugs	Cite and Fine
L-2	One (1) violation for drug use/possession within seven (7) years	Probation (possible cite and fine)
L-3	Two (2) or more violations within seven (7) years	Probation or Revocation (possible cite and fine)
L-4	Multiple violations (generally 3 or more) that show patterned behavior and at least two (2) violations showing that patterned behavior must have occurred within the last five (5) years	Revocation (minimal possibility of probation)
L-5	Perjury on any Respiratory Care Board form that conceals any violation or would in anyway benefit the licensee	Citation and Fine \$1,000 for first offense, \$2,500 thereafter plus any other appropriate discipline

A single incident or occurrence represents one violation.



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**Louise R. Bailey, MEd, RN, Executive Officer**



## BACKGROUND CHECKS FOR STUDENT CLINICAL PLACEMENT

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During the past the Board of Registered Nursing (BRN) has received numerous questions regarding the issue of background checks on registered nursing students prior to clinical placement. The Board has been asked to assist programs with meeting this requirement.

The use of background checks on individuals working in clinical settings is one of the means agencies use to help protect their clients/patients. While obtaining background checks on employees is not new for clinical agencies, the Joint Commission has added to their Human Resources standards (HR.1.20) a section related to criminal background checks. The Joint Commission standard requires agencies to include nursing students in criminal background checks *when required by state law, regulation or hospital policy*. ([www.jointcommission.org](http://www.jointcommission.org))

The BRN does not require prelicensure nursing programs to screen potential students for a history of convictions prior to acceptance into their program. The BRN only requires background checks on criminal convictions at the time of application for licensure. Furthermore, BRN staff reviews all applications with prior convictions on an individual case-by-case basis before issuing or denying licensure. The criteria used by the Board in evaluating an applicant's present eligibility for licensure are found in the California Code of Regulations (CCR) Section 1445. ([www.rn.ca.gov](http://www.rn.ca.gov))

Clinical agencies have the right to establish criteria that would exclude a student from placement at their facility. Those clinical agencies that have a policy that include student nurses in their requirement for criminal background checks will need to comply with their own policy to be compliant with the Joint Commission Standard HR 1.20. On the other hand agencies may use different criteria for students than are used for employees or exempt them entirely and still meet Joint Commission Standards.

Nursing programs should establish a written policy describing the process for obtaining background checks for those clinical agencies that require them. The Board recommends that the policy on background checks, like all program policies, be published in documents that are available to applicants and students. Examples include admission packets and school catalogs and/or nursing student handbooks.

The written policies should include the following:

- Who will perform the search (the college, the agency or an independent service);

- Who will pay for the process;
- Where and by whom the results will be maintained and protected (student confidentiality);
- What criteria will be used to exclude a student from a particular clinical placement; and
- What alternatives if any will be available in the event a student is denied a clinical placement.

The Board encourages clinical agencies and nursing programs to work collaboratively in establishing standardized policies that are the least restrictive possible while also protecting the rights of consumers. A process that allows for a case-by-case review of students with prior convictions is encouraged. However, the burden of proof lies with the student to demonstrate evidence of rehabilitation that is acceptable to the clinical agencies and the nursing program. (See the document “Prior Convictions and Disciplinary Actions” on the Board’s Website.)

### **Frequently Asked Questions Related to Background Checks:**

***Question: Does the BRN require student nurses to undergo criminal background checks prior to admission in a prelicensure school of nursing?***

No. The Board has no authority to request a criminal background check except at the time of application for licensure.

**Question: Does the Joint Commission require that student nurses in California have criminal background checks done prior to the students participating in a clinical rotation in a Joint Commission approved facility?**

No. The Joint Commission requires that clinical agencies follow state law/regulation and their own organization’s policy regarding background checks on students. (See Joint Commission website [www.jointcommission.org](http://www.jointcommission.org)) There is no state law in California that mandates background checks be completed on nursing students. Some clinical agencies have included student nurses in the category of individuals that need to be screened, therefore, the Joint Commission would also require that nursing students need background checks done.

**Question: If a clinical agency denies a student with a prior conviction from being placed at their facility does the BRN require that the student be dropped from that course or from the program?**

No. The program is encouraged to evaluate such students, in collaboration with their clinical agencies, to find possible alternatives for the student to complete the objectives of the course. All students are expected to meet course objectives as defined by the course syllabi and program policy.

**Question: If students have had a criminal background check done as part of clinical placement can they use that information as part of their application packet for licensure?**

No. The Board requires a background check on all applicants for licensure by the Department of Justice. As a health care licensing Board, the background check conducted on applicants is more extensive than most employers obtain.

**Question: If a student is denied access to a clinical site due to a positive criminal background check does the nursing program have to find an alternative site for the student to meet course requirements?**

No. The Board encourages programs and agencies to work collaboratively to review students with a prior conviction on an individual basis since the specific conviction may not prevent the student from ultimately being licensed. While the BRN encourages alternative placement ultimately the program would need to follow their published policy regarding the options available to the student in this situation. (See the attached Criteria for Rehabilitation, CCR 1445.)

**Question: Can the college or university request the Department of Justice to perform a criminal background check on their nursing students in order to meet clinical agency requirements for placement?**

No. Only authorized agencies may request the Department of Justice to perform criminal background checks. The nursing program or the agency may utilize private companies that provide background checks for a fee. The Board does not require the use of such a service nor does it endorse any specific company.

**Question: Should results of criminal background checks be placed in the student's academic file?**

The self-disclosed student information and the results of a background check are confidential information. The nursing program must develop in consultation with their administration and clinical agencies a means to safeguard this information. It is recommended that the process, maintenance and security of student background checks should be described in the program's contract with those agencies requiring screening of nursing students and in policies provided to students and applicants.

**Question: Do students need to have a background check done every time they go to a new clinical agency?**

The Board encourages nursing programs to work collaboratively with other nursing programs in their geographical area to develop a standardized policy with all clinical agencies requiring background checks on nursing students. Since there is no state law or regulation that mandates background checks on nursing students, individual agency policy is the source of this requirement. Working collaboratively within a geographic area is probably the most efficient way to coordinate requirements in the least disruptive manner.

**Question: Can a clinical agency refuse to allow a student to do a clinical course at their agency as a result of a prior conviction?**

Yes. The Board would encourage the nursing program to work with the agency to clearly identify the types of prior convictions that would exclude a student from clinical rotation. The BRN suggests using CCR 1445 as a guide.

**Question: Can a nursing program require students to meet clear background checks prior to admission or as a requirement for progression in the program?**

Admission and progression policies are the purview of the program & the institution. The nursing program should seek guidance from their institutions legal counsel. The Board regulations require that all policies affecting students be written, available to students, and applicants.

**Attachment:**

**TITLE 16, CALIFORNIA CODE OF REGULATIONS:**

**1445. Criteria for Rehabilitation**

- (a) When considering the denial of a license under Section 480 of the code, the board, in evaluating the rehabilitation of the applicant and his/her present eligibility for a license will consider the following criteria:
- (1) The nature and severity of the act(s) or crime(s) under consideration as grounds for denial.
  - (2) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial which also could be considered as grounds for denial under Section 480 of the code.
  - (3) The time that has elapsed since commission of the act(s) or crime(s) referred to in subdivision (1) or (2).
  - (4) The extent to which the applicant has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the applicant.
  - (5) Evidence, if any, of rehabilitation submitted by the applicant.
- (b) When considering the suspension or revocation of a license on the grounds that a registered nurse has been convicted of a crime, the board, in evaluating the rehabilitation of such person and his/her eligibility for a license will consider the following criteria:
- (1) Nature and severity of the act(s) or offense(s).
  - (2) Total criminal record.
  - (3) The time that has elapsed since commission of the act(s) or offense(s).
  - (4) Whether the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.
  - (5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.
  - (6) Evidence, if any, of rehabilitation submitted by the licensee.

# Respiratory Care Board of California

444 North 3<sup>rd</sup> Street, Suite 270, Sacramento, CA 95811

Telephone: (916) 323-9983 Toll-Free: (866) 375-0386 Website: www.rcb.ca.gov E-mail: rcbinfo@dca.ca.gov

## Respiratory Care Practitioner APPLICATION FOR LICENSURE

1. Applicant Category and Applicable Fee (Check one):

- Examination Candidate (Application fee: \$200)
- NBRC Credentialed (Application fee: \$200)
- Education Waiver Candidate (Application fee: \$200) [Please see instructions. Must meet the waiver criteria set forth in California Code of Regulations section 1399.330]

**Make fees noted above, payable to the RCB and submit with this application. If submitting fingerprint cards (in lieu of Live Scan), add \$51.**

Paste a color passport style 2" X 2" photograph here.

Photograph must have been taken within the last 60 days.

Group or cropped pictures will NOT be accepted.

2. Name \_\_\_\_\_  
Last First Middle

3. Mailing Address \_\_\_\_\_  
Number/Street/Route City State Zip

4. Residence Address \_\_\_\_\_  
(if different than above) Number/Street/Route City State Zip

5. Day Telephone No.: ( ) \_\_\_\_\_ Alternate No. (optional): ( ) \_\_\_\_\_

6. E-Mail Address (optional): \_\_\_\_\_

7. Date of Birth: \_\_\_\_/\_\_\_\_/\_\_\_\_ Social Security Number: \_\_\_\_\_

8. **PROGRAM DIRECTOR CERTIFICATION** (Please have your respiratory care program director complete this section ONLY if you will have earned your Associate Degree and completed your respiratory therapy program in the next 90 days.)

The undersigned certifies that the records of this institution show that \_\_\_\_\_  
Student's Name  
has attended \_\_\_\_\_ and is scheduled to  
Institution Name  
complete his/her respiratory care program on \_\_\_\_\_ and will have/has met all the  
requirements for the awarding of an Associate Degree on/as of \_\_\_\_\_ (provided all course  
work currently enrolled in is satisfactory and complete).

**EMBOSS SCHOOL SEAL HERE**

I declare under penalty of perjury under the laws of the State of California that the student listed above will complete our respiratory care program and has met the requirements for the awarding of an Associate Degree on the dates specified above. I understand that should the student not graduate, he/she is ineligible for the licensing examination and the Board should be notified.

Signed \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_  
Program Director Signature Day Month Year



9. Completed Respiratory Education Program Information

Institution Name: \_\_\_\_\_ Date (to be) Completed: \_\_\_\_\_

10. Degree Information (List additional degree information on a separate sheet of paper and submit with application)

Institution Name: \_\_\_\_\_ Degree (to be) Awarded: \_\_\_\_\_

Major: \_\_\_\_\_ Date (to be) Awarded: \_\_\_\_\_

Institution Name: \_\_\_\_\_ Degree (to be) Awarded: \_\_\_\_\_

Major: \_\_\_\_\_ Date (to be) Awarded: \_\_\_\_\_

**An OFFICIAL copy of your transcript (from each institution reflecting completion of your respiratory care program and the awarding of a minimum of an Associate Degree) must be sent from the institution DIRECTLY to the Board.**

11. If you have ever been known by any other name(s), including your maiden name, please list the full name(s) and date(s) of use below (List additional names and dates of use on a separate sheet of paper and submit with application):

Full name: \_\_\_\_\_ Dates of Use (to/from) \_\_\_\_\_

Full name: \_\_\_\_\_ Dates of Use (to/from) \_\_\_\_\_

Full name: \_\_\_\_\_ Dates of Use (to/from) \_\_\_\_\_

12. Have you previously applied for or been issued a certificate or license with the Respiratory Care Board of California? \_\_\_\_\_ Yes \_\_\_\_\_ No

13. Have you ever applied for or been issued a registration, certificate or license to practice respiratory care in any other state? \_\_\_\_\_ Yes \_\_\_\_\_ No

14. Have you ever applied for or been issued a registration, certificate or license to practice any other healing art in California or any other state? \_\_\_\_\_ Yes \_\_\_\_\_ No

15. Have you previously taken the CRT or RRT credentialing exam or any other licensing exam? \_\_\_\_\_ Yes \_\_\_\_\_ No

16. If you answered YES to any question from number 12 through number 15, provide complete information in the following chart (List additional information on a separate sheet of paper and submit with application):

Registration, Certification, License Type	Approximate Date of Application	Approx. Date of Reg., Cert., Lic. Issuance	State or Country where Reg., Cert, or Lic. was Issued	Exam Name or Type	Passed/Failed	Approximate Exam Date	State or Country where Exam was Taken

**If you ever held a registration, certificate or license in another state you must contact the issuing agency and request a "license verification" be sent directly to the Board. If you hold a CRT, or RRT credential, you must contact the NBRC (Web site: [www.nbrc.org](http://www.nbrc.org) /telephone: (913) 599-4200) and request a "credential verification" be sent directly to the Board.**

17. List ALL Driver License Numbers issued within the last 10 YEARS (current or expired):  
(List additional licenses on a separate sheet of paper and submit with application)

License No.: \_\_\_\_\_ Issuing State: \_\_\_\_\_ Expiration Date: \_\_\_\_\_

License No.: \_\_\_\_\_ Issuing State: \_\_\_\_\_ Expiration Date: \_\_\_\_\_

License No.: \_\_\_\_\_ Issuing State: \_\_\_\_\_ Expiration Date: \_\_\_\_\_

**Original Department of Motor Vehicles (DMV) printout(s) showing 10-year histories (unless the license was held for a shorter period of time) MUST be submitted with the application for all licenses noted above.**

**ATTENTION TO APPLICANTS EVER ISSUED A DRIVER LICENSE IN CALIFORNIA**

Approximately 50% of all DMV records submitted to the Board as part of the application process for respiratory care licensure are not accepted. This delays the processing of your application and you will be required to resubmit a request to DMV to obtain the correct record.

**You must request and obtain the "H-6" Driving History Record from DMV and submit with your application.**

18. Have you ever been convicted\* in any state court, federal court or foreign country of:

(a) a citation (including Vehicle Code citations\*\*) \_\_\_\_\_ Yes \_\_\_\_\_ No

(b) a misdemeanor (including ALL Vehicle Code violations) \_\_\_\_\_ Yes \_\_\_\_\_ No

(c) a felony (including ALL Vehicle Code violations) \_\_\_\_\_ Yes \_\_\_\_\_ No

\* A conviction following a plea of nolo contendere is deemed a conviction

\*\* You are not required to report minor traffic violations (i.e. speeding, running traffic stop, illegal parking, etc.) unless the violation was a misdemeanor or felony. You are, however, required to include any violation that is in any way related to drugs or alcohol (i.e., reckless driving, wet reckless, driving under the influence, etc.) Any other citation that was not a violation of the Vehicle Code must be reported. If in doubt, report the information to avoid perjuring your application.

19. Have you ever had a conviction expunged, dismissed, reduced or diverted by the court? (Any conviction which has been dismissed or reduced pursuant to California Penal Code Section 1203.4 MUST BE DISCLOSED!) \_\_\_\_\_ Yes \_\_\_\_\_ No

20. Do you have a medical condition or does your use of chemical substances in any way impair or limit your ability to conduct with safety to the public the practice of respiratory care? \_\_\_\_\_ Yes \_\_\_\_\_ No

21. Has any disciplinary action ever been taken by any federal, state or other governmental agency or other country against any professional or vocational registration, certificate or license you now hold or have held in the past? \_\_\_\_\_ Yes \_\_\_\_\_ No

22. Have you ever resigned from a medical facility or registry in lieu of disciplinary action? \_\_\_\_\_ Yes \_\_\_\_\_ No

23. Have you ever been denied registration, a certificate or a license to practice a business or profession by any federal, state, or other governmental agency or other country? \_\_\_\_\_ Yes \_\_\_\_\_ No

24. Have you ever been denied permission to practice respiratory therapy or any other healing arts profession by any federal, state, or other governmental agency or other country? \_\_\_\_\_ Yes \_\_\_\_\_ No

25. Have you ever been denied permission to take a registration, certification or licensing examination by any federal, state, or other governmental agency or other country?  Yes  No
26. Have you ever voluntarily surrendered a license to practice in the healing arts in this state or any other state?  Yes  No

**If you answered YES to any questions numbered from 18 through 26, you MUST submit a full and complete explanation for each YES answer or each conviction on the enclosed "BACKGROUND STATEMENT" form.**

**In addition, in order to process your application, you must submit certified copies of all applicable:**

- \* **arrest records that resulted in convictions**
- \* **court records and other legal documents stating convictions, final disposition and order**
- \* **if still serving any type of probation, letters of compliance from probation officers**
- \* **dates of treatment, intake/exit assessments, letters from counselors verifying successful completion of substance abuse program(s)**
- \* **letters and legal documentation related to the denial or disciplinary action against any registration, certificate or license**
- \* **any other legal and rehabilitative documents**

OPTIONAL QUESTION: Where did you first learn about the respiratory care profession? *(Please check all that apply)*

Career Fair  High School  Personal Experience  College  Other

Comments: \_\_\_\_\_  
 \_\_\_\_\_

### Penalty of Perjury Certification

I declare under penalty of perjury under the laws of the State of California that the information contained in this application and copies of all documents submitted with the application are true and correct and that I have read and understand the disclosure statements provided in the directions for this application. I understand that if I do not pass the examination on my first attempt, all rights and privileges to practice as a respiratory care practitioner applicant automatically cease. I understand that I must possess a valid license to practice respiratory care in the State of California. I hereby grant the Board permission to verify any information contained in this application.

\_\_\_\_\_  
 Applicant's Signature

\_\_\_\_\_  
 Date

## Consideration to Require Passage of RRT Examination as Part of State Licensure

Prepared April 19, 2011

### Issue

The California Respiratory Care Board (Board) is considering whether to modify respiratory care practitioner (RCP) licensure requirements to require the passage of both the entry-level Certified Respiratory Therapist (CRT) and advanced-level Registered Respiratory Therapist (RRT) examinations.

### Background

The Board believes the respiratory care practice has evolved significantly over the last 25 years, and several members have expressed that the requirement to pass the advanced RRT examination is long over due. The Board has considered requiring the RRT examination as the entry level examination for nearly a decade; However, several years ago, upon further inquiry, the Board found that the national exam provider prohibited the passage of the RRT examination, without first passing the CRT examination.

Currently, there are no other states that require the advanced level examination for licensure. However, increasing education and examination standards has been a high priority nationally, and much discussion has ensued.

The Commission on Accreditation for Respiratory Care (CoARC), is the nationally-recognized organization, responsible for accrediting respiratory therapy education programs. The CoARC is currently phasing out all entry-level educational programs providing, "As of July 1, 2010, no new students shall be admitted into [entry]-level programs. Students enrolled in a [entry]- level program must graduate by December 31, 2012, to be recognized as graduates of a CoARC-accredited program. All [entry]-level programs that remain non-compliant with the new standards must voluntarily withdraw effective December 31, 2012. Failure to do so by this date will result in a CoARC action to withdraw accreditation."

At this time, California has 34 institutions and a total of 37 respiratory therapy programs. Of the 34 institutions, 33 offer an Associate Degree and one offers a baccalaureate degree (**Attachment A**). Of the 37 programs, 34 are advanced and 3 are entry level programs (the three schools with entry-level programs also have advanced-level programs). Graduation from an advanced level program qualifies a student to sit for the advanced-level RRT examination.

The American Association for Respiratory Care (AARC) established a task force in late 2007 to identify likely new roles and responsibilities of respiratory therapists (RTs) in the year 2015 and beyond. A series of three conferences was held between 2008 and 2010. The first task force conference affirmed that the healthcare system is in the process of dramatic change, driven by the need to improve health while decreasing costs and improving quality. This will be facilitated by application of evidence-based care, prevention and management of disease, and closely integrated interdisciplinary care teams. The second task force conference identified specific

competencies needed to assure safe and effective execution of RT roles and responsibilities in the future. The third task force conference was charged with creating plans to change the professional education process so that RTs are able to achieve the needed skills, attitudes, and competencies identified in the previous conferences.

The AARC issued a report of the recommendations of the third task force held in July 2010 (**Attachment B**). The participants, who represented groups concerned with RT education, licensure, and practice, proposed, discussed, and accepted that to be successful in the future a baccalaureate degree must be the minimum entry level for respiratory care practice (by 2021). Also accepted was the recommendation that the Certified Respiratory Therapist examination be retired, and instead, passing of the Registered Respiratory Therapist examination would be required for beginning clinical practice (by 2015).

Following are excerpts from the attached report:

*“A majority of Conference three participants believe that the scope of practice in 2015 will require the level of knowledge and critical thinking tested by the RRT examination. They were confident that the knowledge, skills, and attributes tested on the CRT examination, but not currently on the RRT examination, could be easily incorporated into the two RRT examinations. The vast majority felt that educators prepare students for the RRT examinations and 2015 was the right time to require the RRT credential for entry into practice.”*

*“The American public should feel assured that patient care is given by the most competent and highly trained therapist possible. Many RT educators and department directors surveyed prior to the conference stated that having two credentials (CRT and RRT) confuses the public, patients and other healthcare colleagues who are not aware of the difference. This is primarily the result of CRTs and RRTs being assigned to the same job responsibilities. The majority of conference participants believe that the respiratory therapy profession needs one level of credential (RRT), one educational goal, and one expectation for competency of graduate therapists entering the workforce in 2015 and beyond.”*

*“Of great concern to conference participants was the fact that the CRT credential was developed for 12 month training programs that will no longer exist in 2015. Any change in the credentialing system may require changes in some state regulations controlling who may deliver respiratory care. Participants at the conference recognized the need to prepare for changes in state legislation and regulations regarding licensure of RTs to practice if the CRT examination was retired...Accordingly,..the conference recommended that the AARC establish on July 1, 2011 a commission to assist state regulatory board transition to a RRT license.”*

In December 2010, the AARC board of directors approved the transition plan with attributes of additional research and planning prior to implementation (**Attachment C**). The board of directors stated, “These attributes will provide assurance to all stakeholders that as we move forward, we will not create new problems to solve old ones. We must not create a new system which cannot adequately provide adequate numbers of graduates. By adhering to these attributes we will consider virtually all tactics and strategies put forth while providing assurance of goal-directed change which will not only move the profession forward but also address the many challenges [which] manifest in such a transition.”

### **Proposed Alternative Interim Resolution**

While there are several alternative approaches to require the passage of the RRT examination as part of State licensure, staff are proposing an alternative that is believed to be most efficient, requiring the least personnel resources, as well as, provide for a relatively smooth transition should the RRT examination become the sole entry level examination in the future as recommended by the AARC task force.

The attached proposed legislative and regulatory language provides that effective January 1, 2014, all applicants shall be required to pass both the CRT written examination and the RRT written and clinical simulation examinations prior to licensure (***Attachment D***). It also provides an exemption from the RRT examination for out-of-state applicants who hold a valid and current license in another state, free from *any* discipline, that was issued prior to January 1, 2014.

### **Contingencies**

#### **NBRC**

The proposed alternative is contingent upon conferring with the National Board for Respiratory Care, Inc. (NBRC) and its acceptance to waive all eligibility requirements to sit for the RRT examination.

Currently, the NBRC has several policies to be eligible to sit for the RRT examination that are not compatible with state licensure including:

- Requirement to pass the RRT examination within three years from graduation or recertification as a CRT. A new graduate who passes the CRT but then fails to pass the RRT examination within three years would be required to retake the CRT examination.
- Requirement to hold a current CRT credential. In order to maintain a CRT credential, holders must pay an annual \$25 fee.
- Several other eligibility requirements that could pose a conflict with other respiratory care statutes.

The philosophy to retake an examination or pay annual fees to qualify for a required licensure examination, has not been shared by the California legislature in the past, and is inconsistent with California licensure laws in general. Additional legislative changes would be required to accommodate NBRC's existing policies and it is unlikely the legislature would approve such changes.

The NBRC has a history of being cooperative with the Board in contract negotiations. So long as the Board is not attempting to completely bypass the requirement to take and pass the CRT examination, the NBRC may be open to waiving all other eligibility requirements to sit for the RRT examination.

#### **Legislature & Office of Administrative Law**

The proposed alternative is contingent upon approval of legislation by the California Legislature and Governor Edmund G. Brown, Jr., and regulations by the California Office of Administrative Law.

### **Proposed Alternative Interim Resolution Timetable**

September 2011 - Submit proposed legislation package.

February 2012 - Secure bill author.

Feb.-Sept. 2012 - Actively support legislation.

Sept./Oct. 2012 - Presume legislation chaptered.

Sept. 2012-April 2013 - Amend NBRC contract.

Sept. 2012-Nov. 2013 - Process regulation package; modify ATS database.

January 2014 - Change in effect.

### **Considerations**

*Database Requirements* - Staff will need to work with the Department of Consumers Affairs to make minor changes to the ATS database.

*Staff Resources* - Should the NBRC agree to waive RRT eligibility requirements for the purposes of California licensure, staff will need to explore the method in which that will be used to schedule candidates for the examination. Currently, 99% of all applicants may apply for the CRT exam directly through NBRC. However, NBRC's electronic scheduling system may not accommodate departures from the NBRC's eligibility requirements. It will need to be determined how many candidates may have to be scheduled by Board staff.

In addition, staff will need to explore additional workload associated with extending work permits or issue permits for a greater period of time. Work permits are currently issued for a period of 90 days for new graduates and for all others (upon receipt of certain background clearances). In most instances, this time period allows a candidate to pass the entry level examination and ensure all required documentation is submitted; A work permit extension is rarely necessary. However, by requiring the passage of an additional examination, staff will need to explore whether or not a work permit should be issued for a greater period of time or determine the workload that would be associated with extending work permits.

Additional workload will likely result in the need for an additional staff person. In order to obtain an additional staff person, staff must submit a request 18 months in advance, and for the past several years, requests to increase staffing have been largely denied.

#### *\*Graduates from Entry Level Programs*

The last group of students to graduate from an entry-level educational program will be in December 2012. However, should these applicants not become licensed by December 31, 2013, they will be required to take and pass the RRT examination. These candidates will have much more difficulty in passing the RRT examination and most will not be equipped with the education and/or training needed to pass the examination. Is one-year sufficient time to require licensure? If an applicant had a personal crisis or situation that prevented them from passing the examination in this one-year period, it would virtually eliminate or make it very difficult for them to obtain licensure without further education.

#### *\*Out-of-State Applicants*

While the proposal provides an exemption for out-of-state applicants who hold a current and valid license in another state that was issued prior to January 1, 2014, there will undoubtedly be qualified applicants without current licensure in another state or who were licensed after January 1, 2014 who will be required to take the RRT examination. Should additional exemptions be considered for out-of-state applicants, as well as, previously California licensed RCPs who may have inadvertently allowed their license to cancel?

### Fees

Considering the most recent proposed regulatory changes to the Board's fee schedule, an applicant will pay the following fees prior to licensure (not taking into account the need to retake the examination, if applicable):

Application Fee (to Board):	\$300
Examination Fee (to NBRC):	\$190
Fingerprint Fees:	\$ 71
Other Document Fees:	\$ 20
<u>Total:</u>	<u>\$581</u>

This proposal would tack on addition \$390 in fees paid to the NBRC (\$190 for the RRT written exam and \$200 for the RRT clinical simulation exam). The total fees would then be \$971 (not including fees associated with retaking any examinations).

### \*Shortage of RCPs

Will the impact of requiring the advanced level exam be a temporary shortage of licensees or could the requirement have a permanent impact? Would any permanent shortage of licensees outweigh the need for advanced level competency requirements given the advancements in the profession and the need for public safety?

\* Issues indicated with an astrick are part of the planning and research that AARC has recommended be performed prior to implementing these changes.

### Recommendation

Given the immediate shortcomings and the efforts underway to explore alternatives and the impact of such a change, staff recommend that the Board take no action at this time, though revisit this issue at each Board meeting. Consideration to take action on the proposal is better suited next year at this same time, with an implementation date, no sooner than January 1, 2015. The Board would have the opportunity to evaluate new findings that could alter its course of action.

At this time, staff recommend exploring the willingness of NBRC to enter a contractual agreement to allow the Board to use both the CRT and RRT examinations for licensure, waiving all RRT eligibility requirements and report back to the Board in October.





MARK B HORTON, MD, MSPH  
Director

State of California—Health and Human Services Agency  
California Department of Public Health

Agenda Item: 11  
Meeting Date: 5/10/11



ARNOLD SCHWARZENEGGER  
Governor

December 20, 2010

RECEIVED  
DEC 23 2010

Steve Lipton  
Davis Wright Tremaine LLP  
505 Montgomery Street, Suite 800  
San Francisco, CA 94111-6533

Dear Mr. Lipton:

Thank you for your letter of November 18, 2010, to Kathleen Billingsley, regarding All Facilities Letter (AFL) 10-22 which addressed sleep labs operating under the license of a general acute care hospital (GACH) and the opportunity to provide additional clarification regarding this issue. In your letter, you note both hospital-based and free standing sleep study centers do not provide nursing services because sleep studies are conducted on an outpatient basis and do not involve a stay of more than 23 hours.

Nursing services provided in GACHs are not determined by their location or the number of hours of a patient's stay in the facility. As the AFL states, California Code of Regulations (CCR) Section 70529(c) requires that a registered nurse be responsible for the nursing service in the GACH outpatient service.

In your letter you asked several questions. We have listed below your questions and the California Department of Public Health's (CDPH) responses.

**Question:** Have there been adverse events involving sleep study patients?

**Response:** Adverse event data is not categorized by the type of patient therefore CDPH cannot determine if any adverse events that have been reported are specifically related to sleep study patients. In addition, reporting of adverse events is not a component of the rationale for AFL 10-22.

**Question:** Must registered nurses be present at the commencement of sleep disorder service for each sleep study patient?

**Question:** Must registered nurses be present at the time of departure of each patient from a sleep study center?

**Response:** While the regulation does not specifically state that a nurse must be present at the commencement of the procedure or at the time of departure, Title 22,

California Code of Regulations Section 70215(a)(1) does state that a registered nurse must provide ongoing patient assessments and "such assessments shall be performed and the findings documented in the medical record for each shift and *upon receipt of the patient* when he/she is transferred to another patient care area" (*emphasis added*). .

Title 22 CCR Section 70717(f)(2) requires a determination be made by the patient's licensed health care practitioner acting within the scope of his or her professional licensure, based on his or her assessment of the patient's clinical condition, that the patients transfer or discharge would not create a hazard to the patient. Therefore, a nurse assessment is required when the patient is discharged from the outpatient service at the conclusion of the sleep study to ascertain that the discharge would not create a hazard to the patient.

**Question:** If continuous presence is not needed, can CDPH clarify what non-continuous presence is required? Is the answer different if the sleep study center is located off-campus from a hospital?

**Response:** The sleep lab is an outpatient service of the hospital, so it must comply with Title 22 CCR § 70529 (c) and (d) and § 70215 [ongoing patient assessments] just like any other outpatient service. Although the nurse does not need to be physically in the sleep lab during the test, the nurse should be physically close enough to quickly reassess the patient in case of any adverse change in the patient's condition and to timely respond to emergencies. This regulation is applicable regardless of whether the sleep lab is located on or off of the hospital campus.

**Question:** Are there other patient assessments, in addition to those performed by polysomnographic personnel, that should be taken and recorded by registered nurses for sleep study patients?

**Response:** Nurses must perform appropriate assessments based on the needs of the patient. Polysomnography is not limited to the diagnosis of sleep disorders. The statutory definition at Business and Professions Code Section 3575(a)(2) encompasses treatment of sleep and wake disorders including drug administration (therapeutic and diagnostic use of oxygen) and the use of positive airway pressure including continuous positive airway pressure (CPAP) and bi-level modalities, adaptive servo-ventilation, and maintenance of nasal and oral airways that do not extend into the trachea.

According to the Respiratory Care Board of California, an estimated 95 percent or more of sleep lab studies are for the indication of Obstructive Sleep Apnea. This condition in sleep study patients presenting in poor health and with co-morbidities, such as obesity, make nurse assessment a critical and medically prudent step before patients undergo sleep studies conducted in an outpatient GACH setting. For example, the initial nurse assessment may find evidence the patient's condition is such that a more extensive assessment, beyond that performed by the polysomnographic personnel, and/or treatment not available in the outpatient service is needed. In such a circumstance, the nurse can advise the patient's physician before the commencement of the sleep study.

Mr. Steve Lipton  
Page 3  
December 20, 2010

**Question:** Are registered nurses expected to monitor the assessments performed by polysomnographic personnel?

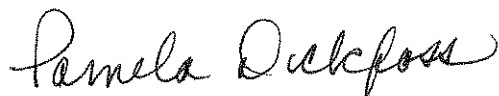
**Response:** State law requires polysomnography technicians to be supervised by physicians. Nurses working in sleep labs are expected to perform duties and assessments that are within their scope of practice. Nurses should ensure they are knowledgeable about the patient's condition in order to take appropriate action regarding the patient's care.

**Question:** In addition the AFL states "such assessments shall be performed and the findings documented in the medical record for each shift and upon receipt of the patient when he/she is transferred to another patient care area." Does this mean if a patient's study overlaps two nursing shifts that another assessment must be performed even though the patient has been monitored throughout the test?

**Response:** Title 22, CCR § 70215(a)(1), as quoted above, clearly states that the ongoing assessments must be completed and the findings documented for each shift. The degree of assessment performed at each shift is based on the nurse's determination relative to the needs of the patient.

Hopefully, this clarifies any confusion regarding AFL 10-22. Thank you again for your letter. If you have additional questions and concerns, please contact me.

Sincerely,



Pamela Dickfoss  
Acting Deputy Director  
Center for Health Care Quality

## 2011 LEGISLATION OF INTEREST

<b>SB 103</b>	Author:	Liu [D]
	Title:	State governments: meetings
	Last Amended:	3/1/11
	Status:	4/12/11: Referred to Senate Appropriations Committee
	Summary:	This bill would authorize a state body, to the extent practicable, to conduct teleconference meetings. This bill would require, upon the request of a member of a state body, a state body to hold an open or closed meeting by teleconference, unless the chair of that state body determines that it would be more costly to hold the meeting by teleconference than it would be to hold it in person. This bill would require a state body that operates an Internet Web Site to provide a supplemental live audio or video broadcast on the Internet Web site of its board meetings that are open to the public, and would specify that a technical failure to provide a live broadcast would not prohibit the board from meeting and taking actions.
Staff Recommended Position	<b>WATCH</b>	

<b>SB 231</b>	Author:	Emmerson [R]
	Title:	Regulatory Boards: healing arts
	Last Amended:	N/A
	Status:	2/17/11: Referred to Committee on Rules - no hearing currently scheduled.
	Summary:	Existing law authorizes health-related boards to adopt regulations requiring licensees to display their license or registration in the locality in which they are treating patients and to make specified disclosures to patients. This bill would make non-substantive, technical changes to that provision.
Staff Recommended Position	<b>WATCH</b>	

**Highlighted bills are attached for reference.**

<b>SB 538</b>	Author:	Price [D]
	Title:	Nursing
	Last Amended:	3/21/11
	Status:	5/2/11: To be heard before the Senate Business, Professions & Economic Development Committee
	Summary:	Existing law, until January 1, 2012, creates within the Department of Consumer Affairs the Board of Registered Nursing, and provides for the board to select an executive director. Under existing law, boards scheduled for repeal are required to be evaluated by the Joint Sunset Review Committee of the Legislature. This bill would extend the operation of these provisions until January 1, 2016, and would specify that the board is subject to review by the appropriate policy committees of the Legislature.
	Staff Recommended Position	<b>WATCH [changes do not impact RCB]</b>

<b>SB 539</b>	Author:	Price [D]
	Title:	Nursing
	Last Amended:	N/A
	Status:	5/2/11: To be heard before the Senate Business, Professions & Economic Development Committee
	Summary:	Existing law, until January 1, 2012, creates within the Department of Consumer Affairs, the Board of Registered Nursing and a Board of Vocational Nursing and Psychiatric Technicians of the State of California. Existing law, until January 1, 2012, requires those boards to select an executive officer to perform duties delegated by each board. Under existing law, boards scheduled for repeal are required to be evaluated by the Joint Sunset Review Committee. This bill would extend the operation of those provisions until January 1, 2016, and would specify that these boards would be subject to review by the appropriate policy committees of the Legislature.
	Staff Recommended Position	<b>WATCH [changes do not impact RCB]</b>

<b>SB 541</b>	Author:	Price [D]
	Title:	Regulatory boards: expert consultants
	Last Amended:	04/13/11
	Status:	5/2/11: To be heard before the Senate Business, Professions & Economic Development Committee
	Summary:	Existing law provides for the licensure and regulation of various professions and vocations by boards within the Department of Consumer Affairs, generally requires applicants for a license to pass an examination, and authorizes boards to take disciplinary action against licensees for violations of law. Existing law establishes standards relating to personal service contracts in state employment. This bill would authorize these boards to enter into an agreement with an expert consultant, subject to the standards regarding personal service contracts described above, to provide enforcement and examination assistance. The bill would require each board to establish policies and procedures for the selection and use of these consultants. This bill would declare that it is to take effect immediately as an urgency statute.
	Board Position	<b>SUPPORT</b> [Letter mailed to author 4/21/11]

<b>SB 544</b>	Author:	Senate Business, Professions and Economic Development Committee
	Title:	Professions and vocations: regulatory boards
	Last Amended:	4/14/11
	Status:	5/2/11: To be heard before the Senate Business, Professions & Economic Development Committee
	Summary:	Includes various proposals from the Consumer Protection Enforcement Initiative (previously proposed in SB 1111 which failed during the prior legislative session).
	Staff Recommended Position	<b>WATCH [only those sections impacting the RCB are attached]</b>

<b>SB 943</b>	Author:	Senate Business, Professions and Economic Development Committee
	Title:	Healing Arts
	Last Amended:	N/A
	Status:	5/2/11: To be heard before the Senate Business, Professions & Economic Development Committee
	Summary:	Omnibus bill for DCA health boards.
	Staff Recommended Position	<b>WATCH [changes do not currently impact RCB]</b>

<b>SB 944</b>	Author:	Senate Business, Professions and Economic Development Committee
	Title:	Committee on Business, Professions and Economic Redevelopment
	Last Amended:	N/A
	Status:	5/2/11: To be heard before the Senate Business, Professions & Economic Development Committee
	Summary:	Omnibus bill for DCA non-health boards.
	Staff Recommended Position	<b>WATCH [changes do not currently impact RCB]</b>

<b>AB 569</b>	Author:	Berryhill [R]
	Title:	Business licensing: Business Master License Center.
	Last Amended:	N/A
	Status:	4/26/11: To be heard before the Assembly Committee on Business, Professions and Consumer Protection
	Summary:	Under existing law, businesses are required to obtain various licenses from regulatory agencies. Existing law also requires state agencies to take specified actions, including, but not limited to, designating a small business liaison, to assist small businesses achieve compliance with statutory and regulatory requirements. This bill would create the Business Master License Center, which would have prescribed duties, including, but not limited to, developing and administering a computerized one-stop master license system capable of storing, retrieving, and exchanging license information, as well as issuing and renewing master licenses, as specified. The bill would permit the Governor to appoint a 3 <sup>rd</sup> -party facilitator from the business community, to provide oversight over the creation of the center and the development of its master license system. This bill would charge license applicants, in addition to any other fees or deposits required to obtain a particular license, a master license administrative fee in specified amounts, to be deposited into the Master License Fund, which this bill would create. This bill would require that the moneys in the fund, upon appropriation by the Legislature, be used only to administer the Business Master License Center.
	Staff Recommended Position	<b>WATCH</b>

<b>AB 958</b>	Author:	Berryhill [R]
	Title:	Regulatory boards: limitations period.
	Last Amended:	N/A
	Status:	03/10/11: Referred to Assembly Committee on Business, Professions and Consumer Protection - no hearing currently scheduled.
	Summary:	Existing law requires licensing boards to file disciplinary action accusations against licensees for various violations within a specified limitations period particular to each board. This bill would delete those specified limitation periods for each board and would instead impose a specified limitations period on all boards within the Department of Consumer Affairs.
	Board Position	<b>OPPOSE UNLESS AMENDED</b> [Letter mailed to author 3/25/11]

<b>AB 991</b>	Author:	Olsen [R]
	Title:	State government: licenses: California Licensing and Permit Center
	Last Amended:	4/13/11
	Status:	4/26/11: To be heard before the Assembly Business, Professions, and Consumer Protection Committee
	Summary:	Existing law requires members of the public to obtain license, permits, or to register with state agencies prior to undertaking certain types of tasks. This bill would require the Governor to establish a Internet Web site, known as the California Licensing and Permit Center (CLPC), to assist the public with licensing, permitting, and registration requirements of state agencies. This bill would require the Governor to operate, via both e-mail and telephone methods, a help center to assist applicants with licensing, permitting, and registration requirements. This bill would require state agencies that the Governor determines has licensing authority to cooperate with this program by providing accurate updated information about their licensing requirements. This bill would create the California License and Permit Fund in the State Treasury, and require state agencies that are required to participate in the CLPC to reallocate a portion of their operating budget, as specified, to pay for the operating cost of the CLPC. This bill would state that upon appropriation by the Legislature, revenues from the fund will be used only for purposes of the bill. This bill would require the CLPC to be provided to the public free of charge.
	Staff Recommended Position	<b>WATCH</b>



<b>AB 1273</b>	Author:	Grove [R]
	Title:	Boards and commissions
	Last Amended:	N/A
	Status:	Not referred to any policy committee - no hearing currently scheduled.
	Summary:	Existing law establishes various boards and commissions to carry out particular tasks, investigations, or other activities. This bill would state that it is the intent of the Legislature to enact legislation that would codify Governor Arnold Schwarzenegger's "Governor's Reorganization Plan 1: Reforming California's Boards and Commissions" from 2004.
	Staff Recommended Position	<b>WATCH</b>

**Introduced by Senator Liu**

January 12, 2011

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An act to amend Section 11123 of the Government Code, relating to state government.

LEGISLATIVE COUNSEL'S DIGEST

SB 103, as amended, Liu. State government: ~~meetings; teleconferencing; meetings.~~

Existing law authorizes a state body to conduct teleconference meetings.

This bill would ~~urge~~ *authorize* a state body, to the extent ~~legally or financially possible, practicable,~~ to conduct teleconference meetings.

*This bill would require, upon the request of a member of a state body, a state body to hold an open or closed meeting by teleconference, unless the chair of that state body determines that it would be more costly to hold the meeting by teleconference than it would be to hold it in person.*

*This bill would require a state body that operates an Internet Web Site to provide a supplemental live audio or video broadcast on the Internet Web site of its board meetings that are open to the public, and would specify that a technical failure to provide a live broadcast would not prohibit the board from meeting and taking actions.*

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. The Legislature finds and declares the following:

1 (a) That teleconferencing is a green technology, allowing  
2 organizations to mitigate energy use by dramatically reducing the  
3 need to travel.

4 (b) By communicating over video or telephone, organizations  
5 can also substantially reduce their carbon footprint by reducing  
6 the need to travel via high-emission methods, such as flying or  
7 driving.

8 (c) Teleconferencing saves money by reducing the number of  
9 trips taken annually, and this monetary savings is multiplied by  
10 the cost of transportation to and from the airport, the flight, per  
11 diem expenses, salary of time lost in traveling, and other incidental  
12 expenses of travel.

13 (d) The amount saved by teleconferencing greatly exceeds the  
14 minimal cost of investing and implementing teleconferencing  
15 solutions, such as the cost for new equipment, services, and  
16 training.

17 (e) Therefore, it is the intent of the Legislature that state bodies,  
18 to the extent possible, conduct teleconference meetings in order  
19 to save the environment and save the state money.

20 SEC. 2. Section 11123 of the Government Code is amended  
21 to read:

22 11123. (a) All meetings of a state body shall be open and  
23 public and all persons shall be permitted to attend any meeting of  
24 a state body except as otherwise provided in this article.

25 ~~(b) (1) This article does not prohibit a state body from holding~~  
26 ~~an open or closed meeting by teleconference for the benefit of the~~  
27 ~~public and state body. The meeting or proceeding held by~~  
28 ~~teleconference shall otherwise comply with all applicable~~  
29 ~~requirements or laws relating to a specific type of meeting or~~  
30 ~~proceeding, including the following:~~

31 *(b) (1) A state body may, to the extent practicable, hold an open*  
32 *or closed meeting by teleconference for the benefit of the public*  
33 *and the state body.*

34 *(2) Upon the request of a member of a state body, the state body*  
35 *shall hold an open or closed meeting by teleconference, unless the*  
36 *chair of the state body determines that it would be more costly to*  
37 *hold the meeting by teleconference than it would be to hold it in*  
38 *person.*

39 *(3) The meeting or proceeding held by teleconference pursuant*  
40 *to this subdivision shall otherwise comply with all applicable*

1 *requirements or laws relating to a specific type of meeting or*  
2 *proceeding, including all of the following:*

3 (A) The teleconferencing meeting shall comply with all  
4 requirements of this article applicable to other meetings.

5 (B) The portion of the teleconferenced meeting that is required  
6 to be open to the public shall be audible to the public at the location  
7 specified in the notice of the meeting.

8 (C) If the state body elects to conduct a meeting or proceeding  
9 by teleconference, it shall post agendas at all teleconference  
10 locations and conduct teleconference meetings in a manner that  
11 protects the rights of any party or member of the public appearing  
12 before the state body. Each teleconference location shall be  
13 identified in the notice and agenda of the meeting or proceeding,  
14 and each teleconference location shall be accessible to the public.  
15 The agenda shall provide an opportunity for members of the public  
16 to address the state body directly pursuant to Section 11125.7 at  
17 each teleconference location.

18 (D) All votes taken during a teleconferenced meeting shall be  
19 by rollcall.

20 (E) The portion of the teleconferenced meeting that is closed  
21 to the public may not include the consideration of any agenda item  
22 being heard pursuant to Section 11125.5.

23 (F) At least one member of the state body shall be physically  
24 present at the location specified in the notice of the meeting.

25 (2) For the purposes of this subdivision, “teleconference” means  
26 a meeting of a state body, the members of which are at different  
27 locations, connected by electronic means, through either audio or  
28 both audio and video. This section does not prohibit a state body  
29 from providing members of the public with additional locations  
30 in which the public may observe or address the state body by  
31 electronic means, through either audio or both audio and video.

32 ~~(e) A state body shall, to the extent legally or financially~~  
33 ~~possible, conduct teleconference meetings, subject to the~~  
34 ~~requirements set out in subdivision (b).~~

35 *(c) (1) If a state body operates an Internet Web site, the state*  
36 *body shall, subject to all otherwise applicable requirements of this*  
37 *article, provide a supplemental live audio or video broadcast on*  
38 *its Internet Web site of each of its meetings that are open to the*  
39 *public.*

1     (2) *If a technical failure prevents the body from providing a live*  
2 *broadcast on its Internet Web site pursuant to this subdivision,*  
3 *that failure shall not constitute a violation of this section if the*  
4 *board exercised reasonable diligence in providing the live*  
5 *broadcast.*

6     (3) *Failure to provide a live broadcast due to a technical failure*  
7 *shall not prohibit the body from meeting and taking actions as*  
8 *otherwise provided by law.*

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**Introduced by Senator Emmerson**

February 9, 2011

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An act to amend Section 104 of the Business and Professions Code, relating to regulatory boards.

LEGISLATIVE COUNSEL'S DIGEST

SB 231, as introduced, Emmerson. Regulatory boards: healing arts. Existing law creates various regulatory boards within the Department of Consumer Affairs. Existing law authorizes health-related boards to adopt regulations requiring licensees to display their license or registration in the locality in which they are treating patients and to make specified disclosures to patients.

This bill would make nonsubstantive, technical changes to that provision.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 104 of the Business and Professions Code  
2 is amended to read:  
3 104. All boards or other regulatory entities within the  
4 department's jurisdiction that the department determines to be  
5 ~~health-related~~ *health related* may adopt regulations to require  
6 ~~licensees a licensee~~ to display ~~their licenses or registrations~~ *his or*  
7 *her license or registration* in the locality in which ~~they are~~ *he or*  
8 *she is* treating patients, and to inform patients as to the identity of  
9 the regulatory agency they may contact if they have any questions  
10 or complaints regarding the licensee. In complying with this

1 requirement, those boards may take into consideration the particular  
2 settings in which ~~licensees practice a licensee practices~~, or other  
3 circumstances ~~which~~ *that* may make ~~the~~ displaying or providing  
4 of information to the consumer extremely difficult for the licensee  
5 in ~~their~~ *his or her* particular type of practice.



**RESPIRATORY CARE BOARD OF CALIFORNIA**

April 21, 2011

The Honorable Curren Price  
California State Senate  
State Capitol, Room 2057  
Sacramento, CA 95814

RE: SB 541 Regulatory Boards: expert consultants


Dear Senator Price:

The Respiratory Care Board of California (Board) is in support of SB 541, which will authorize boards to enter into an agreement with an expert consultant to provide enforcement and examination assistance.

In December 2010, the Department of Consumer Affairs informed all boards, bureaus, commission, and programs that they must enter into a formal consulting services contract, rather than an established agreement, with each subject matter expert utilized to review an enforcement matter, assist in examination development, or evaluate a licensee or applicant. The Board became immediately concerned that an extended contracting process to utilize a subject matter expert would create enormous backlogs, and significantly impact enforcement time frames. Accordingly, the Board was pleased to learn of the efforts to streamline the process as provided by the current language in SB 541.

The Board fully supports this bill, aimed at streamlining the process by which subject matter experts can be utilized, in turn, preventing potential backlogs and unnecessary enforcement delays.

Sincerely,



Larry L. Renner, BS, RRT, RPFT  
President



**Introduced by Senator Price**

February 17, 2011

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An act to ~~amend Sections 7000.5 and 7011 of~~ *add Section 40 to the Business and Professions Code, relating to ~~contractors~~ profession and vocations, and declaring the urgency thereof, to take effect immediately.*

LEGISLATIVE COUNSEL'S DIGEST

SB 541, as amended, Price. Contractors' State License ~~Board~~. *Regulatory boards: expert consultants.*

*Existing law provides for the licensure and regulation of various professions and vocations by boards within the Department of Consumer Affairs. Existing law, the Chiropractic Act, enacted by initiative, provides for the licensure and regulation of chiropractors by the State Board of Chiropractic Examiners. Existing law, the Osteopathic Act, requires the Osteopathic Medical Board of California to regulate osteopathic physicians and surgeons. Existing law generally requires applicants for a license to pass an examination and authorizes boards to take disciplinary action against licensees for violations of law. Existing law establishes standards relating to personal service contracts in state employment.*

*This bill would authorize these boards to enter into an agreement with an expert consultant, subject to the standards regarding personal service contracts described above, to provide enforcement and examination assistance. The bill would require each board to establish policies and procedures for the selection and use of these consultants.*

*This bill would declare that it is to take effect immediately as an urgency statute.*

Existing law establishes within the Department of Consumer Affairs, until January 1, 2012, the Contractors' State License Board and a registrar of contractors, for purposes of the licensure and regulation of contractors. Under existing law, boards scheduled for repeal are required to be evaluated by the Joint Sunset Review Committee.

This bill would extend the operation of those provisions until January 1, 2016, and would specify that the board would be subject to review by the appropriate policy committees of the Legislature.

Vote: majority <sup>2</sup>/<sub>3</sub>. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     *SECTION 1. Section 40 is added to the Business and*  
 2     *Professions Code, to read:*

3     40. (a) *Subject to the standards described in Section 19130*  
 4     *of the Government Code, any board, as defined in Section 22, the*  
 5     *State Board of Chiropractic Examiners, or the Osteopathic Medical*  
 6     *Board of California may enter into an agreement with an expert*  
 7     *consultant to do any of the following:*

8     (1) *Provide an expert opinion on enforcement-related matters,*  
 9     *including providing testimony at an administrative hearing.*

10    (2) *Assist the board as a subject matter expert in examination*  
 11    *development, examination validation, or occupational analyses.*

12    (3) *Evaluate the mental or physical health of a licensee or an*  
 13    *applicant for a license as may be necessary to protect the public*  
 14    *health and safety.*

15    (b) *An executed contract between a board and an expert*  
 16    *consultant shall be exempt from the provisions of Part 2*  
 17    *(commencing with Section 10100) of Division 2 of the Public*  
 18    *Contract Code.*

19    (c) *Each board shall establish policies and procedures for the*  
 20    *selection and use of expert consultants.*

21    *SEC. 2. This act is an urgency statute necessary for the*  
 22    *immediate preservation of the public peace, health, or safety within*  
 23    *the meaning of Article IV of the Constitution and shall go into*  
 24    *immediate effect. The facts constituting the necessity are:*

25    *To ensure that licensees engaging in certain professions and*  
 26    *vocations are adequately regulated at the earliest possible time*

1 *in order to protect and safeguard consumers and the public in this*  
2 *state, it is necessary that this act take effect immediately.*

3 ~~SECTION 1. Section 7000.5 of the Business and Professions~~  
4 ~~Code is amended to read:~~

5 ~~7000.5. (a) There is in the Department of Consumer Affairs~~  
6 ~~a Contractors' State License Board, which consists of 15 members.~~

7 ~~(b) Notwithstanding any other provision of law, the repeal of~~  
8 ~~this section renders the board subject to review by the appropriate~~  
9 ~~policy committees of the Legislature.~~

10 ~~(c) This section shall remain in effect only until January 1, 2016,~~  
11 ~~and as of that date is repealed, unless a later enacted statute, that~~  
12 ~~is enacted before January 1, 2016, deletes or extends that date.~~

13 ~~SEC. 2. Section 7011 of the Business and Professions Code is~~  
14 ~~amended to read:~~

15 ~~7011. (a) The board, by and with the approval of the director,~~  
16 ~~shall appoint a registrar of contractors and fix his or her~~  
17 ~~compensation.~~

18 ~~(b) The registrar shall be the executive officer and secretary of~~  
19 ~~the board and shall carry out all of the administrative duties as~~  
20 ~~provided in this chapter and as delegated to him or her by the~~  
21 ~~board.~~

22 ~~(c) For the purpose of administration of this chapter, there may~~  
23 ~~be appointed a deputy registrar, a chief reviewing and hearing~~  
24 ~~officer, and, subject to Section 159.5, other assistants and~~  
25 ~~subordinates as may be necessary.~~

26 ~~(d) Appointments shall be made in accordance with the~~  
27 ~~provisions of civil service laws.~~

28 ~~(e) This section shall remain in effect only until January 1, 2016,~~  
29 ~~and as of that date is repealed, unless a later enacted statute, that~~  
30 ~~is enacted before January 1, 2016, deletes or extends that date.~~

AMENDED IN SENATE APRIL 14, 2011

AMENDED IN SENATE MARCH 21, 2011

**SENATE BILL**

**No. 544**

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**Introduced by Senator Price**

February 17, 2011

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~~An act to add Section 1623 to the Business and Professions Code, relating to dentistry.~~ *An act to amend Sections 116, 155, 159.5, 726, 802.1, 803, 803.5, 803.6, 822, 2246, 2960.1, 4982.26, and 4992.33 of, and to add Sections 40, 42, 44, 505, 734, 735, 736, 737, 803.7, 803.8, 857, 1688, 1688.1, 1688.2, 1688.3, 1688.4, 1688.5, 1688.6, 1947.1, 1947.2, 1947.3, 1947.4, 1947.5, 1947.6, 1947.7, 1947.8, 2533.5, 2533.6, 2533.7, 2533.8, 2533.9, 2533.10, 2533.11, 2533.12, 2533.13, 2533.14, 2570.38, 2570.39, 2570.40, 2570.41, 2570.42, 2570.43, 2570.44, 2570.45, 2570.46, 2570.47, 2661.8, 2661.9, 2661.10, 2661.11, 2661.12, 2661.13, 2661.14, 2661.15, 2661.16, 2661.17, 2766, 2766.1, 2766.2, 2766.3, 2766.4, 2766.5, 2766.6, 2766.7, 2766.8, 2879.1, 2879.2, 2879.3, 2879.4, 2879.5, 2879.6, 2879.7, 2879.8, 2879.10, 2969.1, 2969.2, 2969.3, 2969.4, 3112, 3112.1, 3112.2, 3112.3, 3112.4, 3112.5, 3112.6, 3112.7, 3112.8, 3112.9, 3405, 3405.1, 3405.2, 3405.3, 3405.4, 3405.5, 3405.6, 3405.7, 3405.8, 3405.9, 3531.1, 3531.2, 3531.3, 3531.4, 3531.5, 3531.6, 3531.7, 3531.8, 3531.9, 3531.10, 3665, 3665.1, 3665.2, 3665.3, 3665.4, 3665.5, 3665.6, 3665.7, 3665.8, 3665.9, 3769.4, 3769.5, 3769.6, 3769.7, 3769.8, 3769.9, 3769.10, 4316, 4316.1, 4316.2, 4316.3, 4316.4, 4316.5, 4316.6, 4375, 4526, 4526.1, 4526.2, 4526.3, 4526.4, 4526.5, 4526.6, 4526.8, 4526.9, 4888, 4888.1, 4888.2, 4888.3, 4888.4, 4888.5, 4888.6, 4888.7, 4964.1, 4964.2, 4964.3, 4964.4, 4964.55, 4964.6, 4964.7, 4964.8, 4964.9, 4964.10, 4990.44, 4990.45, 4990.46, 4990.47, 4990.48, 4990.49, 4990.50, 4990.51, 4990.52, and 4990.53 to, to add Article 16 (commencing with Section 880) to Chapter 1 of Division 2 of, and to repeal Sections 2608.5 and 2660.5 of, the Business and*

Professions Code, and to **add section 12529.8 to the Government Code, relating to professions and vocations.**

**LEGISLATIVE COUNSEL'S DIGEST**

SB 544, as amended, Price. ~~Dental Board of California: collection of fees, fines, and cost recovery. Professions and vocations: regulatory boards.~~

(1) Existing law provides for the licensure and regulation of profession and vocation licensees by various boards within the Department of Consumer Affairs. Within the department, there are healing arts boards and nonhealing arts boards. The department is under the control of the Director of Consumer Affairs.

This bill would require cooperation between state agencies and all boards within the department when investigating a licensee, and would require a state agency to provide to the board all licensee records in the custody of the state agency. The bill would require all local and state law enforcement agencies, state and local governments, state agencies, licensed health care facilities, and any employers of any licensee to provide licensee records to any board within the department upon request by that board, and would make an additional requirement specific to the Department of Justice. By imposing additional duties on local agencies, the bill would impose a state-mandated local program.

The bill would prohibit a licensee regulated by a board within the department from including certain provisions in an agreement to settle a civil litigation action arising from his or her practice, as specified.

(2) Existing law authorizes the director to audit and review, among other things, inquiries and complaints regarding licensees, dismissals of disciplinary cases, and discipline short of formal accusation by the Medical Board of California and the California Board of Podiatric Medicine.

This bill would additionally authorize the director or his or her designee to audit and review the aforementioned activities by any of the healing arts boards.

Existing law authorizes the director to employ investigators, inspectors, and deputies as are necessary to investigate and prosecute all violations of any law, the enforcement of which is charged to the department, or to any board in the department. Inspectors used by the boards are not required to be employees of the Division of Investigation, but may be employees of, or under contract to, the boards.

*This bill would authorize healing arts boards to employ investigators who are not employees of the Division of Investigation, and would authorize those boards to contract for investigative services provided by the Department of Justice. The bill would also establish within the Division of Investigation the Health Quality Enforcement Unit to provide investigative services for healing arts proceedings.*

*The bill would require all healing arts boards within the department to report annually, by October 1, to the department and the Legislature certain information, including, but not limited to, the total number of complaints closed or resolved without discipline, the total number of complaints and reports referred for formal investigation, and the total number of accusations filed and the final disposition of accusations through the board and court review, respectively.*

*The bill would also provide that it is an act of unprofessional conduct for any licensee of a healing arts board to fail to furnish information in a timely manner to the board or the board's investigators, or to fail to cooperate and participate in any disciplinary investigation pending against him or her, except as specified.*

*Existing law requires a physician and surgeon, osteopathic physician and surgeon, and a doctor of podiatric medicine to report to his or her respective board when there is an indictment or information charging a felony against the licensee or he or she has been convicted of a felony or misdemeanor.*

*This bill would expand that requirement to a licensee of any healing arts board, as specified, and would further require a report when disciplinary action is taken against a licensee by another healing arts board or by a healing arts board of another state or an agency of the federal government.*

*Existing law requires the district attorney, city attorney, and other prosecuting agencies to notify the Medical Board of California, the Osteopathic Medical Board of California, the California Board of Podiatric Medicine, the State Board of Chiropractic Examiners, and other allied health boards and the court clerk if felony charges have been filed against one of the board's licensees. Existing law also requires, within 10 days after a court judgment, the clerk of the court to report to the appropriate board when a licentiate has committed a crime or is liable for any death or personal injury resulting in a specified judgment. Existing law also requires the clerk of the court to transmit to certain boards specified felony preliminary transcript hearings concerning a defendant licensee.*

*The bill would instead make those provisions applicable to all healing arts boards. By imposing additional duties on these local agencies, the bill would impose a state-mandated local program.*

*The bill would require a healing arts board, the State Board of Chiropractic Examiners, and the Osteopathic Medical Board of California to query the federal National Practitioner Data Bank prior to, among other things, granting a license to an applicant who is currently residing in another state or granting a petition for reinstatement of a revoked or surrendered license.*

*This bill would make it a crime to engage in the practice of healing arts without a current and valid license, except as specified; or to fraudulently buy, sell, or obtain a license to practice healing arts. By creating new crimes, the bill would impose a state-mandated local program.*

*(3) Under existing law, healing arts licensees are regulated by various healing arts boards within the department. These boards are authorized to issue, deny, suspend, and revoke licenses based on various grounds and to take disciplinary action against a licensee for the failure to comply with their laws and regulations. Existing law requires or authorizes a board to appoint an executive officer to, among other things, perform duties delegated by the board.*

*This bill would authorize a healing arts board to delegate to its executive officer, where an administrative action has been filed by the board to revoke the license of a licensee and the licensee has failed to file a notice of defense or appear at the hearing, the authority to adopt a proposed default decision. The bill would also authorize a healing arts board to enter into a settlement with a licensee or applicant in lieu of the issuance of an accusation or statement of issues against the licensee or applicant.*

*The bill would also provide that the license of a licensee of a healing arts board shall be suspended if the licensee is incarcerated after the conviction of a felony and would require the board to notify the licensee of the suspension and of his or her right to a specified hearing. The bill would specify that no hearing is required, however, if the conviction was for a violation of federal law or state law for the use of dangerous drugs or controlled substances or specified sex offenses; a violation for the use of dangerous drugs or controlled substances would also constitute unprofessional conduct and a crime, thereby imposing a state-mandated local program.*

*The bill would prohibit the issuance of a healing arts license to any person who is a registered sex offender, and would provide for the revocation of a license upon the conviction of certain sex offenses, as defined. The bill would provide that the commission of, and conviction for, any act of sexual abuse, misconduct, or attempted sexual misconduct, whether or not with a patient, or conviction of a felony requiring registration as a sex offender, be considered a crime substantially related to the qualifications, functions, or duties of a healing arts licensee. The bill would impose requirements on boards with respect to individuals required to register as a sex offender.*

*This bill would authorize the Attorney General and his or her investigative agents and certain healing arts boards to inquire into any alleged violation of the laws under the boards' jurisdiction and to inspect documents subject to specified procedures. The bill would make the licensees of those healing arts boards or a health care facility that fails to comply with a patient's medical record request, as specified, within 15 days, or who fails or refuses to comply with a court order mandating release of records, subject to civil and criminal penalties, as specified. By creating a new crime, the bill would impose a state-mandated local program.*

*The bill would require the employer of certain health care licensees to report to the appropriate board within a specified timeframe information relating to a health care licensee who is suspended or terminated for cause or who resigns. The bill would require a board to investigate these reports, including the inspection and copying of certain documents relating to that suspension, termination, or resignation.*

*The bill would require specified healing arts boards, on or after July 1, 2013, to post on their Internet Web sites specified information in their possession, custody, or control regarding their licensees and their license status, prior discipline, and convictions.*

*The bill would authorize a healing arts board to automatically suspend the license of any licensee who also has an out-of-state license or a license issued by an agency of the federal government that is suspended or revoked, except as specified.*

*(4) The bill would declare the intent of the Legislature that the Bureau of State Audits conduct a specified review of the Pharmacists Recovery Program by January 1, 2013.*

*(5) Existing law establishes in the Department of Justice the Health Quality Enforcement Section, whose primary responsibility is to investigate and prosecute proceedings against licensees and applicants*



*within the jurisdiction of the Medical Board of California and any committee of the board, the California Board of Podiatric Medicine, and the Board of Psychology.*

*This bill would authorize a healing arts board to utilize the services of the Health Quality Enforcement Section or licensing section. If utilized, the bill would require the Attorney General to assign attorneys employed by the office of the Attorney General to work on location at the licensing unit of the Division of Investigation of the Department of Consumer Affairs, as specified.*

*(6) The bill would delete, revise and recast various provisions of the Physical Therapy Practice Act and would make other conforming changes.*

*(7) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.*

*This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.*

*With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.*

~~Existing law, the Dental Practice Act, provides for the licensure and regulation of dentists by the Dental Board of California. Existing law establishes specified fees for licenses, permits, and certificates issued by the board. Existing law also sets forth specified fines and penalties for violations of the Dental Practice Act.~~

~~This bill would authorize the board to contract with a collection agency to collect outstanding fees, fines, or cost recovery amounts from persons who owe those moneys to the board, as specified. The bill would require the contract with a collection agency to contain specified safeguards to protect an individual's personal information from unauthorized disclosure and to provide for the liability of the collection agency for the unauthorized use or disclosure of that information.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: ~~no~~-yes.

*The people of the State of California do enact as follows:*

1     **SECTION 1.** *This act shall be known and may be cited as the*  
2 *Consumer Health Protection Enforcement Act.*

3     **SEC. 2.** (a) *The Legislature finds and declares the following:*

4     (1) *In recent years, it has been reported that many of the healing*  
5 *arts boards within the Department of Consumer Affairs take, on*  
6 *average, more than three years to investigate and prosecute*  
7 *violations of law, a timeframe that does not adequately protect*  
8 *consumers.*

9     (2) *The excessive amount of time that it takes healing arts boards*  
10 *to investigate and prosecute licensed professionals who have*  
11 *violated the law has been caused, in part, by legal and procedural*  
12 *impediments to the enforcement programs.*

13     (3) *Both consumers and licensees have an interest in the quick*  
14 *resolution of complaints and disciplinary actions. Consumers need*  
15 *prompt action against licensees who do not comply with*  
16 *professional standards, and licensees have an interest in timely*  
17 *review of consumer complaints to keep the trust of their patients.*

18     (b) *It is the intent of the Legislature that the changes made by*  
19 *this act will improve efficiency and increase accountability within*  
20 *the healing arts boards of the Department of Consumer Affairs,*  
21 *and will remain consistent with the long-held paramount goal of*  
22 *consumer protection.*

23     (c) *It is further the intent of the Legislature that the changes*  
24 *made by this act will provide healing arts boards within the*  
25 *Department of Consumer Affairs with the regulatory tools and*  
26 *authorities necessary to reduce the average timeframe for*  
27 *investigating and prosecuting violations of law by healing arts*  
28 *practitioners to between 12 and 18 months.*

29     **SEC. 3.** *Section 40 is added to the Business and Professions*  
30 *Code, to read:*

31     40. (a) *Notwithstanding any other provision of law, for*  
32 *purposes of a board investigation, a state agency shall, upon*  
33 *receiving a request in writing from a board for records about a*  
34 *particular licensee, immediately provide to the board all records*  
35 *about a licensee in the custody of the state agency, including, but*  
36 *not limited to, confidential records, medical records, and records*  
37 *related to closed or open investigations.*

1 (b) If a state agency has knowledge that a person it is  
2 investigating is licensed by a board, the state agency shall notify  
3 the board that it is conducting an investigation against one of its  
4 licentiates. The notification of investigation to the board shall  
5 include the name, address, and, if known, the professional license  
6 type and license number of the person being investigated and the  
7 name and address or telephone number of a person who can be  
8 contacted for further information about the investigation. The state  
9 agency shall cooperate with the board in providing any requested  
10 information.

11 (c) A board shall maintain the confidentiality of any personally  
12 identifying information contained in the records maintained  
13 pursuant to this section, and shall not share, sell, or transfer the  
14 information to any third party unless it is otherwise authorized by  
15 federal or state law.

16 SEC. 4. Section 42 is added to the Business and Professions  
17 Code, to read:

18 42. Notwithstanding any other provision of law, all local and  
19 state law enforcement agencies, state and local governments, state  
20 agencies, licensed health care facilities, and employers of a  
21 licensee of a board shall provide records to the board upon request  
22 prior to receiving payment from the board for the cost of providing  
23 the records. These records include, but are not limited to,  
24 confidential records, medical records, and records related to closed  
25 or open investigations.

26 SEC. 5. Section 44 is added to the Business and Professions  
27 Code, to read:

28 44. (a) A licensee of a board shall not include or permit to be  
29 included any of the following provisions in an agreement to settle  
30 a civil litigation action filed by a consumer arising from the  
31 licensee's practice, whether the agreement is made before or after  
32 the filing of an action:

33 (1) A provision that prohibits another party to the dispute from  
34 contacting or cooperating with the board.

35 (2) A provision that prohibits another party to the dispute from  
36 filing a complaint with the board.

37 (3) A provision that requires another party to the dispute to  
38 withdraw a complaint he or she has filed with the board.

39 (b) A provision described in subdivision (a) is void as against  
40 public policy.

1 (c) A violation of this section constitutes unprofessional conduct  
2 and may subject the licensee to disciplinary action.

3 (d) If a board complies with Section 2220.7, that board shall  
4 not be subject to the requirements of this section.

5 **SEC. 6. Section 116 of the Business and Professions Code is**  
6 **amended to read:**

7 116. (a) The director or his or her designee may audit and  
8 review, upon his or her own initiative, or upon the request of a  
9 consumer or licensee, inquiries and complaints regarding licensees,  
10 dismissals of disciplinary cases, the opening, conduct, or closure  
11 of investigations, informal conferences, and discipline short of  
12 formal accusation by the Medical Board of California, the allied  
13 health professional boards, and the California Board of Podiatric  
14 Medicine any of the healing arts boards described in Division 2  
15 (commencing with Section 500). The director may make  
16 recommendations for changes to the disciplinary system to the  
17 appropriate board, the Legislature, or both, for their consideration.

18 (b) The director shall report to the Chairpersons of the Senate  
19 Committee on Business and Professions Committee and Economic  
20 Development and the Assembly Committee on Health Committee  
21 annually, commencing March 1, 1995, regarding his or her findings  
22 from any audit, review, or monitoring and evaluation conducted  
23 pursuant to this section.

24 **SEC. 7. Section 155 of the Business and Professions Code is**  
25 **amended to read:**

26 155. (a) In accordance with Section 159.5, the director may  
27 employ such investigators, inspectors, and deputies as are necessary  
28 to properly to investigate and prosecute all violations of any law,  
29 the enforcement of which is charged to the department or to any  
30 board, agency, or commission in the department.

31 (b) It is the intent of the Legislature that inspectors used by  
32 boards, bureaus, or commissions in the department shall not be  
33 required to be employees of the Division of Investigation, but may  
34 either be employees of, or under contract to, the boards, bureaus,  
35 or commissions. Contracts for services shall be consistent with  
36 Article 4.5 (commencing with Section 19130) of Chapter 6 of Part  
37 2 of Division 5 of Title 2 of the Government Code. All civil service  
38 employees currently employed as inspectors whose functions are  
39 transferred as a result of this section shall retain their positions,  
40 status, and rights in accordance with Section 19994.10 of the

1 Government Code and the State Civil Service Act (Part 2  
2 (commencing with Section 18500) of Division 5 of Title 2 of the  
3 Government Code).

4 *(c) Investigators used by any healing arts board, as described*  
5 *in Division 2 (commencing with Section 500), shall not be required*  
6 *to be employees of the Division of Investigation and a healing arts*  
7 *board may contract for investigative services provided by the*  
8 *Department of Justice.*

9 (e)

10 (d) Nothing in this section limits the authority of, or prohibits,  
11 investigators in the Division of Investigation in the conduct of  
12 inspections or investigations of any licensee, or in the conduct of  
13 investigations of any officer or employee of a board or the  
14 department at the specific request of the director or his or her  
15 designee.

16 *SEC. 8. Section 159.5 of the Business and Professions Code*  
17 *is amended to read:*

18 159.5. There is in the department the **Division of Investigation**.  
19 The division is in the charge of a person with the title of chief of  
20 the division. *There is in the division the Health Quality*  
21 *Enforcement Unit. The primary responsibility of the unit is to*  
22 *investigate complaints against licensees and applicants within the*  
23 *jurisdiction of the healing arts boards described in Section 720.*

24 Except as provided in ~~Section 160, investigators who have the~~  
25 ~~authority of peace officers, 16 of Chapter 1394 of the Statutes of~~  
26 ~~1970, all positions for the personnel necessary to provide~~  
27 ~~investigative services, as specified in subdivision (a) of Section~~  
28 ~~160 Section 160 of this code and in subdivision (a) (b) of Section~~  
29 ~~830.3 of the Penal Code, shall be in the division and the personnel~~  
30 ~~shall be appointed by the director.~~

31 *SEC. 9. Section 505 is added to the Business and Professions*  
32 *Code, to read:*

33 505. (a) *Each healing arts board shall report annually to the*  
34 *department and the Legislature, not later than October 1 of each*  
35 *year, the following information:*

36 (1) *The total number of complaints closed or resolved without*  
37 *discipline, prior to accusation.*

38 (2) *The total number of complaints and reports referred for*  
39 *formal investigation.*

1 (3) *The total number of accusations filed and the final*  
2 *disposition of accusations through the board and court review,*  
3 *respectively.*

4 (4) *The total number of citations issued, with fines and without*  
5 *fines, and the number of public letters of reprimand, letters of*  
6 *admonishment, or other similar action issued, if applicable.*

7 (5) *The total number of final licensee disciplinary actions taken,*  
8 *by category.*

9 (6) *The total number of cases in process for more than six*  
10 *months, more than 12 months, more than 18 months, and more*  
11 *than 24 months, from receipt of a complaint by the board.*

12 (7) *The average time in processing complaints, from original*  
13 *receipt of the complaint by the board, for all cases, at each stage*  
14 *of the disciplinary process and court review, respectively.*

15 (8) *The total number of licensees in diversion or on probation*  
16 *for alcohol or drug abuse, and the number of licensees successfully*  
17 *completing diversion programs or probation, and failing to do so,*  
18 *respectively.*

19 (9) *The total number of probation violation reports and*  
20 *probation revocation filings, and their dispositions.*

21 (10) *The total number of petitions for reinstatement, and their*  
22 *dispositions.*

23 (b) *“Action,” for purposes of this section, includes proceedings*  
24 *brought by, or on behalf of, the healing arts board against licensees*  
25 *for unprofessional conduct that have not been finally adjudicated,*  
26 *as well as disciplinary actions taken against licensees.*

27 (c) *A board that complies with Section 2313 shall not be subject*  
28 *to the requirements of this section.*

29 (d) *A report to be submitted pursuant to this section shall be*  
30 *submitted in compliance with Section 9795 of the Government*  
31 *Code.*

32 (e) *This section shall become inoperative on October 1, 2016.*

33 **SEC. 10. Section 726 of the Business and Professions Code is**  
34 **amended to read:**

35 726. (a) *The commission of any act of sexual abuse,*  
36 *misconduct, or relations with a patient, client, or customer*  
37 *constitutes unprofessional conduct and grounds for disciplinary*  
38 *action for any person licensed under this division; and under any*  
39 *initiative act referred to in this division—~~and under Chapter 17~~*  
40 *(commencing with Section 9000) of Division 3.*

1 (b) For purposes of Division 1.5 (commencing with Section  
2 475), the commission of, and conviction for, any act of sexual  
3 abuse, sexual misconduct, or attempted sexual misconduct, whether  
4 or not with a patient, or conviction of a felony requiring  
5 registration pursuant to Section 290 of the Penal Code, shall be  
6 considered a crime substantially related to the qualifications,  
7 functions, or duties of a licensee of a healing arts board described  
8 in this division.

9 This

10 (c) This section shall not apply to sexual contact between a  
11 ~~physician and surgeon~~ licensee and his or her spouse or person in  
12 an equivalent domestic relationship when that ~~physician and~~  
13 ~~surgeon~~ licensee provides medical treatment, other than  
14 psychotherapeutic treatment, to his or her spouse or person in an  
15 equivalent domestic relationship.

16 **SEC. 11. Section 734 is added to the Business and Professions**  
17 **Code, to read:**

18 734. (a) The conviction of a charge of violating any federal  
19 statute or regulation or any statute or regulation of this state  
20 regulating dangerous drugs or controlled substances constitutes  
21 unprofessional conduct. The record of the conviction is conclusive  
22 evidence of the unprofessional conduct. A plea or verdict of guilty  
23 or a conviction following a plea of nolo contendere is deemed to  
24 be a conviction within the meaning of this section.

25 (b) Discipline may be ordered against a licensee in accordance  
26 with the laws and regulations of the healing arts board or the  
27 board may order the denial of the license when the time for appeal  
28 has elapsed, or the judgment of conviction has been affirmed on  
29 appeal, or when an order granting probation is made suspending  
30 the imposition of sentence, irrespective of a subsequent order under  
31 the provisions of Section 1203.4 of the Penal Code allowing that  
32 person to withdraw his or her plea of guilty and to enter a plea of  
33 not guilty, or setting aside the verdict of guilty, or dismissing the  
34 accusation, complaint, information, or indictment.

35 **SEC. 12. Section 735 is added to the Business and Professions**  
36 **Code, to read:**

37 735. A violation of any federal statute or federal regulation or  
38 any of the statutes or regulations of this state regulating dangerous  
39 drugs or controlled substances constitutes unprofessional conduct.

1 **SEC. 13. Section 736 is added to the Business and Professions**

2 **Code, to read:**

3 736. (a) *The use or prescribing for or administering to himself*  
4 *or herself of any controlled substance; or the use of any of the*  
5 *dangerous drugs specified in Section 4022, or of alcoholic*  
6 *beverages, to the extent or in such a manner as to be dangerous*  
7 *or injurious to the licensee, or to any other person or to the public,*  
8 *or to the extent that the use impairs the ability of the licensee to*  
9 *practice safely; or conviction of any misdemeanor or felony*  
10 *involving the use, consumption, or self-administration of any of*  
11 *the substances referred to in this section, or conviction of any*  
12 *combination thereof, constitutes unprofessional conduct. The*  
13 *record of the conviction is conclusive evidence of the*  
14 *unprofessional conduct.*

15 (b) *A plea or verdict of guilty or a conviction following a plea*  
16 *of nolo contendere is deemed to be a conviction within the meaning*  
17 *of this section. Discipline may be ordered against a licensee in*  
18 *accordance with the laws and regulations of the healing arts board*  
19 *or the board may order the denial of the license when the time for*  
20 *appeal has elapsed or the judgment of conviction has been affirmed*  
21 *on appeal or when an order granting probation is made suspending*  
22 *imposition of sentence, irrespective of a subsequent order under*  
23 *the provisions of Section 1203.4 of the Penal Code allowing that*  
24 *person to withdraw his or her plea of guilty and to enter a plea of*  
25 *not guilty, or setting aside the verdict of guilty, or dismissing the*  
26 *accusation, complaint, information, or indictment.*

27 (c) *A violation of subdivision (a) is a misdemeanor, and upon*  
28 *conviction shall be punished by a fine of up to ten thousand dollars*  
29 *(\$10,000), or by imprisonment in the county jail of up to six*  
30 *months, or by both that fine and imprisonment.*

31 **SEC. 14. Section 737 is added to the Business and Professions**

32 **Code, to read:**

33 737. *It shall be unprofessional conduct for any licensee of a*  
34 *healing arts board to fail to comply with the following:*

35 (a) *Furnish information in a timely manner to the healing arts*  
36 *board or the board's investigators or representatives if requested*  
37 *by the board.*

38 (b) *Cooperate and participate in any investigation or other*  
39 *regulatory or disciplinary proceeding pending against the licensee.*  
40 *However, this subdivision shall not be construed to deprive a*



1 licensee of any privilege guaranteed by the Fifth Amendment to  
2 the Constitution of the United States, or any other constitutional  
3 or statutory privileges. This subdivision shall not be construed to  
4 require a licensee to cooperate with a request that requires him  
5 or her to waive any constitutional or statutory privilege or to  
6 comply with a request for information or other matters within an  
7 unreasonable period of time in light of the time constraints of the  
8 licensee's practice. Any exercise by a licensee of any constitutional  
9 or statutory privilege shall not be used against the licensee in a  
10 regulatory or disciplinary proceeding against the licensee.

11 **SEC. 15. Section 802.1 of the Business and Professions Code**  
12 **is amended to read:**

13 802.1. (a) (1) ~~A physician and surgeon, osteopathic physician~~  
14 ~~and surgeon, and a doctor of podiatric medicine shall report either~~  
15 ~~licensee of a healing arts board described in this division shall~~  
16 ~~report any of the following~~ to the entity that issued his or her  
17 license:

18 (A) The bringing of an indictment or information charging a  
19 felony against the licensee.

20 (B) The conviction of the licensee, including any verdict of  
21 guilty, or plea of guilty or no contest, of any felony or  
22 misdemeanor.

23 (C) Any disciplinary action taken by another licensing entity or  
24 authority of this state or of another state or an agency of the federal  
25 government.

26 (2) The report required by this subdivision shall be made in  
27 writing within 30 days of the date of the bringing of the indictment  
28 or ~~information or of the conviction~~ *the charging of a felony, or of*  
29 *the arrest, conviction, or disciplinary action.*

30 (b) Failure to make a report required by this section shall be a  
31 public offense punishable by a fine not to exceed five thousand  
32 dollars (\$5,000) *and shall constitute unprofessional conduct.*

33 **SEC. 16. Section 803 of the Business and Professions Code is**  
34 **amended to read:**

35 803. (a) Except as provided in subdivision (b), within 10 days  
36 after a judgment by a court of this state that a person who holds a  
37 license, certificate, or other similar authority from ~~the Board of~~  
38 ~~Behavioral Sciences or from an agency mentioned in subdivision~~  
39 ~~(a) of Section 800 (except a person licensed pursuant to Chapter~~  
40 ~~3 (commencing with Section 1200)) a healing arts board described~~

1 *in this division*, has committed a crime, or is liable for any death  
2 or personal injury resulting in a judgment for an amount in excess  
3 of thirty thousand dollars (\$30,000) caused by his or her  
4 negligence, error or omission in practice, or his or her rendering  
5 unauthorized professional services, the clerk of the court that  
6 rendered the judgment shall report that fact to the agency that  
7 issued the license, certificate, or other similar authority.

8 (b) For purposes of a physician and surgeon, osteopathic  
9 physician and surgeon, or doctor of podiatric medicine, who is  
10 liable for any death or personal injury resulting in a judgment of  
11 any amount caused by his or her negligence, error or omission in  
12 practice, or his or her rendering unauthorized professional services,  
13 the clerk of the court that rendered the judgment shall report that  
14 fact to the agency board that issued the license.

15 *SEC. 17. Section 803.5 of the Business and Professions Code*  
16 *is amended to read:*

17 803.5. (a) The district attorney, city attorney, or other  
18 prosecuting agency shall notify the ~~Medical Board of California,~~  
19 ~~the Osteopathic Medical Board of California,~~ the California Board  
20 of Podiatric Medicine, the State Board of Chiropractic Examiners,  
21 ~~or other appropriate allied health board,~~ *appropriate healing arts*  
22 *board described in this division* and the clerk of the court in which  
23 the charges have been filed, of any filings against a licensee of  
24 that board charging a felony immediately upon obtaining  
25 information that the defendant is a licensee of the board. The notice  
26 shall identify the licensee and describe the crimes charged and the  
27 facts alleged. The prosecuting agency shall also notify the clerk  
28 of the court in which the action is pending that the defendant is a  
29 licensee, and the clerk shall record prominently in the file that the  
30 defendant holds a license from one of the boards described above.

31 (b) The clerk of the court in which a licensee of one of the  
32 boards is convicted of a crime shall, within 48 hours after the  
33 conviction, transmit a certified copy of the record of conviction  
34 to the applicable board.

35 *SEC. 18. Section 803.6 of the Business and Professions Code*  
36 *is amended to read:*

37 803.6. (a) The clerk of the court shall transmit any felony  
38 preliminary hearing transcript concerning a defendant licensee to  
39 the ~~Medical Board of California,~~ the ~~Osteopathic Medical Board~~  
40 ~~of California,~~ the California Board of Podiatric Medicine, or other

1 ~~appropriate allied health board, as applicable, appropriate healing~~  
2 ~~arts board described in this division~~ where the total length of the  
3 transcript is under 800 pages and shall notify the appropriate board  
4 of any proceeding where the transcript exceeds that length.

5 (b) In any case where a probation report on a licensee is prepared  
6 for a court pursuant to Section 1203 of the Penal Code, a copy of  
7 that report shall be transmitted by the probation officer to the  
8 *appropriate healing arts board*.

9 *SEC. 19. Section 803.7 is added to the Business and Professions*  
10 *Code, to read:*

11 803.7. *The Department of Justice shall ensure that subsequent*  
12 *reports and subsequent disposition information authorized to be*  
13 *issued to any board identified in Section 101 are submitted to that*  
14 *board within 30 days from notification of subsequent arrests,*  
15 *convictions, or other updates.*

16 *SEC. 20. Section 803.8 is added to the Business and Professions*  
17 *Code, to read:*

18 803.8. (a) *The office of the Attorney General shall serve, or*  
19 *submit to a healing arts board for service, an accusation within*  
20 *60 calendar days of receipt from the healing arts board.*

21 (b) *The office of the Attorney General shall serve, or submit to*  
22 *a healing arts board for service, a default decision within five days*  
23 *following the time period allowed for the filing of a notice of*  
24 *defense.*

25 (c) *The office of the Attorney General shall set a hearing date*  
26 *within three days of receiving a notice of defense, unless the*  
27 *healing arts board gives the office of the Attorney General*  
28 *instruction otherwise.*

29 *SEC. 21. Section 822 of the Business and Professions Code is*  
30 *amended to read:*

31 822. If a licensing agency determines that its *licentiate's ability*  
32 *to practice his or her profession safely is impaired* because the  
33 licentiate is mentally ill, or physically ill affecting competency,  
34 the licensing agency may take action by any one of the following  
35 methods:

36 (a) Revoking the licentiate's certificate or license.

37 (b) Suspending the licentiate's right to practice.

38 (c) Placing the licentiate on probation.

1 (d) Taking such other action in relation to the licentiate as the  
2 licensing agency in its discretion deems proper, *including issuing*  
3 *a limited or restricted license.*

4 The licensing agency shall not reinstate a revoked or suspended  
5 certificate or license *or lift any restrictions or limitations* until it  
6 has received competent evidence of the absence or control of the  
7 condition which caused its action and until it is satisfied that with  
8 due regard for the public health and safety the person's right to  
9 practice his or her profession may be safely reinstated.

10 *SEC. 22. Section 857 is added to the Business and Professions*  
11 *Code, to read:*

12 857. (a) *Each healing arts board, the State Board of*  
13 *Chiropractic Examiners, and the Osteopathic Medical Board of*  
14 *California shall query the federal National Practitioner Data Bank*  
15 *prior to any of the following:*

16 (1) *Granting a license to an applicant who is currently residing*  
17 *in another state.*

18 (2) *Granting a license to an applicant who is currently or has*  
19 *ever been licensed as a health care practitioner in California or*  
20 *another state.*

21 (3) *Granting a petition for reinstatement of a revoked or*  
22 *surrendered license.*

23 (b) *Notwithstanding subdivision (a), a healing arts board, the*  
24 *State Board of Chiropractic Examiners, and the Osteopathic*  
25 *Medical Board of California may query the federal National*  
26 *Practitioner Data Bank prior to issuing any license.*

27 (c) *A healing arts board shall charge a fee to cover the actual*  
28 *cost to conduct the queries described in this section.*

29 *SEC. 23. Article 16 (commencing with Section 880) is added*  
30 *to Chapter 1 of Division 2 of the Business and Professions Code,*  
31 *to read:*

32  
33 *Article 16. Unlicensed Practice*

34  
35 880. (a) (1) *It is a public offense, punishable by a fine not to*  
36 *exceed one hundred thousand dollars (\$100,000), by imprisonment*  
37 *in a county jail not to exceed one year, or by both that fine and*  
38 *imprisonment, for:*

1 (A) Any person who does not hold a current and valid license  
2 to practice a healing art under this division to engage in that  
3 practice.

4 (B) Any person who fraudulently buys, sells, or obtains a license  
5 to practice any healing art in this division or to violate any  
6 provision of this division.

7 (2) Subparagraph (A) of paragraph (1) shall not apply to any  
8 person who is already being charged with a crime under the  
9 specific healing arts licensing provisions for which he or she  
10 engaged in unauthorized practice.

11 (b) Notwithstanding any other provision of law, any person who  
12 is licensed under this division, and who supervises the practice of  
13 a healing art by any person who does not hold a current and valid  
14 license to practice that healing art under this division, is guilty of  
15 a public crime, punishable by a fine not to exceed one hundred  
16 thousand dollars (\$100,000), by imprisonment in a county jail not  
17 to exceed one year, or by both that fine and imprisonment.

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*SEC. 135. Section 3769.4 is added to the Business and Professions Code, to read:*

*3769.4. (a) The board may delegate to its executive officer the authority to adopt a proposed default decision where an administrative action to revoke a license has been filed and the licensee has failed to file a notice of defense or to appear at the hearing and a proposed default decision revoking the license has been issued.*

*(b) The board may delegate to its executive officer the authority to adopt a proposed settlement agreement where an administrative action to revoke a license has been filed by the board and the licensee has agreed to the revocation or surrender of his or her license.*

*(c) The executive officer shall, at scheduled board meetings, report to the board the number of proposed default decisions or proposed settlement agreements adopted pursuant to this section.*

*SEC. 136. Section 3769.5 is added to the Business and Professions Code, to read:*

*3769.5. (a) Notwithstanding Section 11415.60 of the Government Code, the board may enter into a settlement with a licensee or applicant in lieu of the issuance of an accusation or statement of issues against that licensee or applicant, as applicable.*

*(b) The settlement shall include language identifying the factual basis for the action being taken and a list of the statutes or regulations violated.*

*(c) A person who enters a settlement pursuant to this section is not precluded from filing a petition, in the timeframe permitted by law, to modify the terms of the settlement or petition for early termination of probation, if probation is part of the settlement.*

*(d) Any settlement against a licensee executed pursuant to this section shall be considered discipline and a public record and*

1 shall be posted on the applicable board's Internet Web site. Any  
2 settlement against an applicant executed pursuant to this section  
3 shall be considered a public record and shall be posted on the  
4 applicable board's Internet Web site.

5 (e) The executive officer shall, at scheduled board meetings,  
6 report to the board the number of proposed settlement agreements  
7 adopted pursuant to this section.

8 **SEC. 137.** Section 3769.6 is added to the Business and  
9 Professions Code, to read:

10 3769.6. (a) The license of a licensee shall be suspended  
11 automatically during any time that the licensee is incarcerated  
12 after conviction of a felony, regardless of whether the conviction  
13 has been appealed. The board shall, immediately upon receipt of  
14 the certified copy of the record of conviction, determine whether  
15 the license of the licensee has been automatically suspended by  
16 virtue of his or her incarceration, and if so, the duration of that  
17 suspension. The board shall notify the licensee in writing of the  
18 license suspension and of his or her right to elect to have the issue  
19 of penalty heard as provided in subdivision (d).

20 (b) Upon receipt of the certified copy of the record of conviction,  
21 if after a hearing before an administrative law judge from the  
22 Office of Administrative Hearings it is determined that the felony  
23 for which the licensee was convicted was substantially related to  
24 the qualifications, functions, or duties of a licensee, the board  
25 shall suspend the license until the time for appeal has elapsed, if  
26 no appeal has been taken, or until the judgment of conviction has  
27 been affirmed on appeal or has otherwise become final, and until  
28 further order of the board.

29 (c) Notwithstanding subdivision (b), a conviction of a charge  
30 of violating any federal statute or regulation or any statute or  
31 regulation of this state, regulating dangerous drugs or controlled  
32 substances, or a conviction of Section 187, 261, 262, or 288 of the  
33 Penal Code, shall be conclusively presumed to be substantially  
34 related to the qualifications, functions, or duties of a licensee and  
35 no hearing shall be held on this issue. However, upon its own  
36 motion or for good cause shown, the board may decline to impose  
37 or may set aside the suspension when it appears to be in the interest  
38 of justice to do so, with due regard to maintaining the integrity of,  
39 and confidence in, the practice regulated by the board.

1 (d) (1) Discipline may be ordered against a licensee in  
2 accordance with the statutes and regulations of the board when  
3 the time for appeal has elapsed, the judgment of conviction has  
4 been affirmed on appeal, or an order granting probation is made  
5 suspending the imposition of sentence, irrespective of a subsequent  
6 order under Section 1203.4 of the Penal Code allowing the person  
7 to withdraw his or her plea of guilty and to enter a plea of not  
8 guilty, setting aside the verdict of guilty, or dismissing the  
9 accusation, complaint, information, or indictment.

10 (2) The issue of penalty shall be heard by an administrative law  
11 judge from the Office of Administrative Hearings. The hearing  
12 shall not be had until the judgment of conviction has become final  
13 or, irrespective of a subsequent order under Section 1203.4 of the  
14 Penal Code, an order granting probation has been made  
15 suspending the imposition of sentence; except that a licensee may,  
16 at his or her option, elect to have the issue of penalty decided  
17 before those time periods have elapsed. Where the licensee so  
18 elects, the issue of penalty shall be heard in the manner described  
19 in subdivision (b) at the hearing to determine whether the  
20 conviction was substantially related to the qualifications, functions,  
21 or duties of a licensee. If the conviction of a licensee who has made  
22 this election is overturned on appeal, any discipline ordered  
23 pursuant to this section shall automatically cease. Nothing in this  
24 subdivision shall prohibit the board from pursuing disciplinary  
25 action based on any cause other than the overturned conviction.

26 (e) The record of the proceedings resulting in a conviction,  
27 including a transcript of the testimony in those proceedings, may  
28 be received in evidence.

29 (f) Any other provision of law setting forth a procedure for the  
30 suspension or revocation of a license issued by the board shall not  
31 apply to proceedings conducted pursuant to this section.

32 **SEC. 138.** Section 3769.7 is added to the Business and  
33 Professions Code, to read:

34 3769.7. (a) Except as otherwise provided, any proposed  
35 decision or decision issued in accordance with the procedures set  
36 forth in Chapter 5 (commencing with Section 11500) of Part 1 of  
37 Division 3 of Title 2 of the Government Code, that contains any  
38 finding of fact that the licensee engaged in any act of sexual contact  
39 with a patient, as defined in subdivision (c) of Section 729, or any  
40 finding that the licensee has committed a sex offense, shall contain



1 *an order revoking the license. The proposed decision shall not*  
2 *contain any order staying the revocation of the licensee.*

3 (b) *As used in this section, the term sex offense shall mean any*  
4 *of the following:*

5 (1) *Any offense for which registration is required by Section*  
6 *290 of the Penal Code or a finding that a person committed such*  
7 *an act.*

8 (2) *Any offense described in Section 243.4(a)–(d), 261.5, 313.1,*  
9 *or 647(a) or (d) of the Penal Code or a finding that a person*  
10 *committed such an act.*

11 (3) *Any attempt to commit any of the offenses specified in this*  
12 *section.*

13 (4) *Any offense committed or attempted in any other state or*  
14 *against the laws of the United States which, if committed or*  
15 *attempted in this state, would have been punishable as one or more*  
16 *of the offenses specified in this section.*

17 **SEC. 139.** *Section 3769.8 is added to the Business and*  
18 *Professions Code, to read:*

19 3769.8. (a) *Except as otherwise provided, with regard to an*  
20 *individual who is required to register as a sex offender pursuant*  
21 *to Section 290 of the Penal Code, or the equivalent in another*  
22 *state or territory, under military law, or under federal law, the*  
23 *board shall be subject to the following requirements:*

24 (1) *The board shall deny an application by the individual for*  
25 *licensure in accordance with the procedures set forth in Chapter*  
26 *5 (commencing with Section 11500) of Part 1 of Division 3 of Title*  
27 *2 of the Government Code.*

28 (2) *If the individual is licensed under this chapter, the board*  
29 *shall promptly revoke the license of the individual in accordance*  
30 *with the procedures set forth in Chapter 5 (commencing with*  
31 *Section 11500) of Part 1 of Division 3 of Title 2 of the Government*  
32 *Code. The board shall not stay the revocation and place the license*  
33 *on probation.*

34 (3) *The board shall not reinstate or reissue the individual's*  
35 *license. The board shall not issue a stay of license denial nor place*  
36 *the license on probation.*

37 (b) *This section shall not apply to any of the following:*

38 (1) *An individual who has been relieved under Section 290.5 of*  
39 *the Penal Code of his or her duty to register as a sex offender, or*  
40 *whose duty to register has otherwise been formally terminated*

1 under California law or the law of the jurisdiction that requires  
2 his or her registration as a sex offender.

3 (2) An individual who is required to register as a sex offender  
4 pursuant to Section 290 of the Penal Code solely because of a  
5 misdemeanor conviction under Section 314 of the Penal Code.  
6 However, nothing in this paragraph shall prohibit the board from  
7 exercising its discretion to discipline a licensee under any other  
8 provision of state law based upon the licensee's conviction under  
9 Section 314 of the Penal Code.

10 (3) Any administrative adjudication proceeding under Chapter  
11 5 (commencing with Section 11500) of Part 1 of Division 3 of Title  
12 2 of the Government Code that is fully adjudicated prior to January  
13 1, 2008. A petition for reinstatement of a revoked or surrendered  
14 license shall be considered a new proceeding for purposes of this  
15 paragraph, and the prohibition against reinstating a license to an  
16 individual who is required to register as a sex offender shall be  
17 applicable.

18 **SEC. 140.** Section 3769.9 is added to the Business and  
19 Professions Code, to read:

20 3769.9. Unless otherwise provided, on or after July 1, 2013,  
21 the board shall post on its Internet Web site the following  
22 information in its possession, custody, or control regarding every  
23 licensee for which the board licenses:

24 (a) With regard to the status of every license, whether or not  
25 the licensee or former licensee is in good standing, subject to a  
26 temporary restraining order, subject to an interim suspension  
27 order, subject to a restriction or cease practice ordered pursuant  
28 to Section 23 of the Penal Code, or subject to any of the  
29 enforcement actions described in Section 803.1.

30 (b) With regard to prior discipline of a licensee, whether or not  
31 the licensee or former licensee has been subject to discipline by  
32 the board or by the board of another state or jurisdiction, as  
33 described in Section 803.1.

34 (c) Any felony conviction of a licensee reported to the board.

35 (d) All current accusations filed by the Attorney General,  
36 including those accusations that are on appeal. For purposes of  
37 this paragraph, "current accusation" means an accusation that  
38 has not been dismissed, withdrawn, or settled, and has not been  
39 finally decided upon by an administrative law judge and the board  
40 unless an appeal of that decision is pending.

1 (e) Any malpractice judgment or arbitration award imposed  
2 against a licensee and reported to the healing arts board.

3 (f) Any hospital disciplinary action imposed against a licensee  
4 that resulted in the termination or revocation of a licensee's  
5 hospital staff privileges for a medical disciplinary cause or reason  
6 pursuant to Section 805.

7 (g) Any misdemeanor conviction of a licensee that results in a  
8 disciplinary action or an accusation that is not subsequently  
9 withdrawn or dismissed.

10 (h) Appropriate disclaimers and explanatory statements to  
11 accompany the above information, including an explanation of  
12 what types of information are not disclosed. These disclaimers  
13 and statements shall be developed by the board and shall be  
14 adopted by regulation.

15 (i) The information provided on the Internet shall be in  
16 accordance with the California Public Records Act (Chapter 3.5  
17 (commencing with Section 6250) of Division 7 of Title 1 of the  
18 Government Code) and the Information Practices Act of 1977  
19 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4  
20 of Division 3 of the Civil Code) and shall comply with the  
21 Department of Consumer Affairs Guidelines for Access to Public  
22 Records.

23 (j) Information provided on the Internet may not include  
24 personal information, unless otherwise provided pursuant to this  
25 chapter, including the home telephone number, date of birth, or  
26 social security number. The information may not include the  
27 licensee's address, but may include the city and county of the  
28 licensee's address of record.

29 **SEC. 141. Section 3796.10 is added to the Business and**  
30 **Professions Code, to read:**

31 3796.10. (a) Unless otherwise provided, if a licensee possesses  
32 a license or is otherwise authorized to practice in any state other  
33 than California or by any agency of the federal government and  
34 that license or authority is suspended or revoked outright, the  
35 California license of the licensee shall be suspended automatically  
36 for the duration of the suspension or revocation, unless terminated  
37 or rescinded as provided in subdivision (c). The healing arts board  
38 shall notify the licensee of the license suspension and of his or her  
39 right to have the issue of penalty heard as provided in this section.

1 (b) Upon its own motion or for good cause shown, a healing  
2 arts board may decline to impose or may set aside the suspension  
3 when it appears to be in the interest of justice to do so, with due  
4 regard to maintaining the integrity of, and confidence in, the  
5 specific healing art.

6 (c) The issue of penalty shall be heard by an administrative law  
7 judge sitting alone or with a panel of the board, in the discretion  
8 of the board. A licensee may request a hearing on the penalty and  
9 that hearing shall be held within 90 days from the date of the  
10 request. If the order suspending or revoking the license or authority  
11 to practice is overturned on appeal, any discipline ordered  
12 pursuant to this section shall automatically cease. Upon a showing  
13 to the administrative law judge or panel by the licensee that the  
14 out-of-state action is not a basis for discipline in California, the  
15 suspension shall be rescinded. If an accusation for permanent  
16 discipline is not filed within 90 days of the suspension imposed  
17 pursuant to this section, the suspension shall automatically  
18 terminate.

19 (d) The record of the proceedings that resulted in the suspension  
20 or revocation of the licensee's out-of-state license or authority to  
21 practice, including a transcript of the testimony therein, may be  
22 received in evidence.

23 (e) This section shall not apply to a licensee who maintains his  
24 or her primary practice in California, as evidenced by having  
25 maintained a practice in this state for not less than one year  
26 immediately preceding the date of suspension or revocation.  
27 Nothing in this section shall preclude a licensee's license from  
28 being suspended pursuant to any other provision of law.

29 (f) This section shall not apply to a licensee whose license has  
30 been surrendered, whose only discipline is a medical staff  
31 disciplinary action at a federal hospital and not for medical  
32 disciplinary cause or reason as that term is defined in Section 805,  
33 or whose revocation or suspension has been stayed, even if the  
34 licensee remains subject to terms of probation or other discipline.

35 (g) This section shall not apply to a suspension or revocation  
36 imposed by a state that is based solely on the prior discipline of  
37 the licensee by another state.

38 (h) The other provisions of this article setting forth a procedure  
39 for the suspension or revocation of a licensee's license or  
40 certificate shall not apply to summary suspensions issued pursuant

1 to this section. If a summary suspension has been issued pursuant  
2 to this section, the licensee may request that the hearing on the  
3 penalty conducted pursuant to subdivision (c) be held at the same  
4 time as a hearing on the accusation.

5 (i) A board that complies with Section 2310 shall not be subject  
6 to the requirements of this section.

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*SEC. 189. Section 12529.8 is added to the Government Code, to read:*

*12529.8. (a) Any healing arts board described in Division 2 (commencing with Section 500) of, the Business and Professions Code may utilize the model prescribed in Sections 12529 to 12529.6, inclusive, for the investigation and prosecution of some or all of its enforcement actions and may utilize the services of the Department of Justice Health Quality Enforcement Section or the licensing section. If a board elects to proceed pursuant to this section and utilizes the services of the licensing section, the Department of Justice shall assign attorneys to work on location*

1 at the licensing unit of the Division of Investigation of the  
2 Department of Consumer Affairs.

3 (b) The report requirements contained in Section 12529.7 shall  
4 apply to any healing arts board that utilizes those provisions for  
5 enforcement.

6 (c) This section shall not apply to any healing arts board listed  
7 in subdivision (a) of Section 12529.

8 **SEC. 190.** (a) It is the intent of the Legislature that the  
9 Department of Consumer Affairs shall, on or before December  
10 31, 2012, establish an enterprise information technology system  
11 necessary to electronically create and update healing arts license  
12 information, track enforcement cases, and allocate enforcement  
13 efforts pertaining to healing arts licensees. The Legislature intends  
14 the system to be designed as an integrated system to support all  
15 business automation requirements of the department's licensing  
16 and enforcement functions.

17 (b) The Legislature also intends the department to enter into  
18 contracts for telecommunication, programming, data analysis,  
19 data processing, and other services necessary to develop, operate,  
20 and maintain the enterprise information technology system.

21 **SEC. 191.** No reimbursement is required by this act pursuant  
22 to Section 6 of Article XIII B of the California Constitution for  
23 certain costs that may be incurred by a local agency or school  
24 district because, in that regard, this act creates a new crime or  
25 infraction, eliminates a crime or infraction, or changes the penalty  
26 for a crime or infraction, within the meaning of Section 17556 of  
27 the Government Code, or changes the definition of a crime within  
28 the meaning of Section 6 of Article XIII B of the California  
29 Constitution.

30 However, if the Commission on State Mandates determines that  
31 this act contains other costs mandated by the state, reimbursement  
32 to local agencies and school districts for those costs shall be made  
33 pursuant to Part 7 (commencing with Section 17500) of Division  
34 4 of Title 2 of the Government Code.

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**ASSEMBLY BILL**

**No. 569**

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**Introduced by Assembly Member Bill Berryhill**

February 16, 2011

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An act to add Part 14 (commencing with Section 15987) to Division 3 of Title 2 of the Government Code, relating to business licensing.

LEGISLATIVE COUNSEL'S DIGEST

AB 569, as introduced, Bill Berryhill. Business licensing: Business Master License Center.

Under existing law, businesses are required to obtain various licenses from regulatory agencies. Existing law also requires state agencies to take specified actions, including, but not limited to, designating a small business liaison, to assist small businesses achieve compliance with statutory and regulatory requirements.

This bill would create the Business Master License Center, which would have prescribed duties, including, but not limited to, developing and administering a computerized one-stop master license system capable of storing, retrieving, and exchanging license information, as well as issuing and renewing master licenses, as specified. The bill would permit the Governor to appoint a 3rd-party facilitator from the business community, to provide oversight over the creation of the center and the development of its master license system.

This bill would charge license applicants, in addition to any other fees or deposits required to obtain a particular license, a master license administrative fee in specified amounts, to be deposited into the Master License Fund, which this bill would create. This bill would require that the moneys in the fund, upon appropriation by the Legislature, be used only to administer the Business Master License Center.



Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. The Legislature finds and declares all of the  
2 following:

3 (a) The number of state licenses required for new businesses  
4 and the renewal of existing licenses place an undue burden on  
5 business.

6 (b) The state can reduce its costs by coordinating and  
7 consolidating application forms, information, and licenses.

8 (c) By creating the Business Master License Center, the  
9 Legislature intends to provide a convenient, accessible, and timely  
10 one-stop system for the business community to acquire and  
11 maintain the necessary state licenses to conduct business.

12 SEC. 2. Part 14 (commencing with Section 15987) is added to  
13 Division 3 of Title 2 of the Government Code, to read:

14  
15 PART 14. BUSINESS MASTER LICENSE CENTER

16  
17 15987. This part shall be known, and may be cited, as the  
18 Business Master Licensing System Act.

19 15987.1. As used in this part, the following words shall have  
20 the following meanings:

21 (a) “Business Master License Center” and “center” mean the  
22 business registration and licensing center established by this part  
23 and located in and under the administrative control of the State  
24 and Consumer Services Agency.

25 (b) “License” means the whole or part of any agency permit,  
26 license, certificate, approval, registration, charter, or any form or  
27 permission required by law, including agency regulation, to engage  
28 in any business activity.

29 (c) “Master application” means a document incorporating  
30 pertinent data from existing applications for licenses covered under  
31 this part.

32 (d) “Master license” means the single document designed for  
33 public display issued by the Business Master License Center which  
34 certifies state agency license approval and which incorporates the

1 endorsements for individual licenses included in the master license  
2 system, which the state requires for any person subject to this part.

3 (e) “Person” means any individual, sole proprietorship,  
4 partnership, association, cooperative, corporation, nonprofit  
5 organization, state or local government agency, and any other  
6 organization required to register with the state to do business in  
7 the state and to obtain one or more licenses from the state or any  
8 of its agencies.

9 (f) “Regulatory agency” means any state agency, board,  
10 commission, or division which regulates one or more professions,  
11 occupations, industries, businesses, or activities.

12 (g) “Renewal application” means a document used to collect  
13 pertinent data for renewal of licenses covered under this chapter.

14 (h) “System” means the mechanism by which master licenses  
15 are issued and renewed, license and regulatory information is  
16 disseminated, and account data is exchanged by the agencies.

17 15987.2. (a) There is created within the State and Consumer  
18 Services Agency a Business Master License Center.

19 (b) The duties of the center shall include, but not be limited to,  
20 all of the following:

21 (1) Developing and administering a computerized one-stop  
22 master license system capable of storing, retrieving, and  
23 exchanging license information, as well as issuing and renewing  
24 master licenses in an efficient manner.

25 (2) Developing and administering, as part of the master license  
26 system, a uniform business identification number for each  
27 participating business that shall be recognized by each participating  
28 agency.

29 (3) Providing a license information service detailing  
30 requirements to establish or engage in business in this state.

31 (4) Providing for staggered master license renewal.

32 (5) Identifying types of licenses appropriate for inclusion in the  
33 master license system.

34 (6) Recommending in reports to the Governor and the  
35 Legislature the elimination, consolidation, or other modification  
36 of duplicative, ineffective, or inefficient licensing or inspection  
37 requirements.

38 (7) Incorporating licenses into the master license system.

1 (8) Working with other regulatory agencies to develop a system  
2 that permits participating agencies to share information generated  
3 from the master license system.

4 (c) The Secretary of State and Consumer Services may adopt  
5 regulations, in accordance with the Administrative Procedure Act  
6 (Chapter 3.5 (commencing with Section 11340) of Part 1 of  
7 Division 3 of Title 2), as may be necessary to effectuate the  
8 purposes of this part.

9 15987.3. (a) The center shall compile information regarding  
10 the regulatory programs associated with each of the licenses  
11 obtainable under the master license system. This information shall  
12 include, at a minimum, a listing of the statutes and administrative  
13 regulations requiring the licenses and pertaining to the regulatory  
14 programs that are directly related to the licensure.

15 (b) The center shall provide information governed by this section  
16 to any person requesting it. Materials issued by the center  
17 describing the services provided by the center shall indicate that  
18 this information is available upon request.

19 15987.4. The following agencies shall participate fully in the  
20 implementation of this part:

21 (a) California Environmental Protection Agency.

22 (b) Department of Alcoholic Beverage Control.

23 (c) Department of Consumer Affairs.

24 (d) Department of Corporations.

25 (e) Department of Fair Employment and Housing.

26 (f) Department of Fish and Game.

27 (g) Department of Food and Agriculture.

28 (h) Department of Industrial Relations.

29 (i) Department of Motor Vehicles.

30 (j) Department of Parks and Recreation.

31 (k) Department of Pesticide Regulation.

32 (l) Department of Toxic Substances Control.

33 (m) Department of Transportation.

34 (n) Employment Development Department.

35 (o) Franchise Tax Board.

36 (p) Secretary of State.

37 (q) State Board of Equalization.

38 (r) State Department of Health Care Services.

39 (s) Any other agency that the secretary determines has licensing  
40 authority that is consistent with the purposes of this part.

1 15987.5. (a) A person requiring a license that has been  
2 incorporated into the system shall submit a master application to  
3 the center requesting the issuance of the required licenses. The  
4 master application form shall contain, in consolidated form, the  
5 information necessary for the issuance of the licenses.

6 (b) The applicant shall include with the application the sum of  
7 all fees and deposits required for each requested license and the  
8 master license administrative fee imposed pursuant to Section  
9 15987.6.

10 (c) Regardless of any authority delegated to the State and  
11 Consumer Services Agency to implement this part, the authority  
12 for approving issuance and renewal of a requested license that  
13 requires a preclicensing or renewal investigation, inspection, testing,  
14 or any discretionary judgmental review by the regulatory agency  
15 otherwise legally authorized to issue the license, shall remain with  
16 that agency. The center may issue those licenses for which proper  
17 fee payment and a completed application form have been received  
18 and for which no preclicensing or renewal approval action is  
19 required by the regulatory agency.

20 (d) Upon receipt of the application and proper fee payment for  
21 any license for which issuance is subject to regulatory agency  
22 action pursuant to subdivision (c), the center shall immediately  
23 notify the regulatory agency with authority to approve issuance or  
24 renewal of the license requested by the applicant. Each regulatory  
25 agency shall, within a reasonable time after receiving the notice,  
26 advise the center of one of the following:

27 (1) That the agency approves the issuance of the requested  
28 license and will advise the applicant of any specific conditions  
29 required for issuing the license.

30 (2) That the agency denies the issuance of the license and will  
31 provide the applicant reasons for the denial.

32 (3) That the application is pending with the agency.

33 (e) The center shall issue a master license endorsed for all the  
34 approved licenses to the applicant and advise the applicant of the  
35 status of other requested licenses. It is the responsibility of the  
36 applicant to contest a decision regarding conditions imposed or  
37 licenses denied through the normal process established by statute  
38 or by the agency with the authority for approving issuance of the  
39 license.

1 (f) Regulatory agencies shall be provided information from the  
2 master application for their licensing and regulatory functions.

3 15987.6. (a) The Master License Fund is hereby created in the  
4 State Treasury. The administrative fees imposed pursuant to  
5 subdivision (b) shall be deposited into the fund and, upon  
6 appropriation by the Legislature, shall be used only to administer  
7 the Business Master License Center.

8 (b) The center shall collect a master license administrative fee  
9 of fifteen dollars (\$15) on each master application and a master  
10 license administrative fee of nine dollars (\$9) on each master  
11 renewal application. The entire master license administrative fee  
12 shall be deposited in the Master License Fund.

13 (c) Any license fee collected under the master license system,  
14 except for the master license administrative fee imposed pursuant  
15 to subdivision (b), that is imposed by the authorizing agency that  
16 approves the license, shall be deposited with the Treasurer. Upon  
17 issuance or renewal of the master license, the Treasurer shall  
18 allocate the fees to the appropriate accounts, pursuant to the  
19 applicable statutes, for those agencies' licenses.

20 15987.7. (a) The center shall assign an expiration date for each  
21 master license. All renewable licenses endorsed on that master  
22 license shall expire on that date. License fees shall be prorated to  
23 accommodate the staggering of expiration dates.

24 (b) All renewable licenses endorsed on a master license shall  
25 be renewed by the center under conditions originally imposed  
26 unless a regulatory agency advises the center of conditions or  
27 denials to be imposed before the endorsement is renewed.

28 15987.8. The center shall not issue or renew a master license  
29 to a person if any of the following occur:

30 (a) The person does not have a valid tax registration, if required.

31 (b) The person is a corporation delinquent in fees or penalties  
32 owing to the Secretary of State.

33 (c) The person is not validly registered under any statute giving  
34 corporate or business licensing responsibilities to the Secretary of  
35 State.

36 (d) The person has not submitted the sum of all fees and deposits  
37 required for the requested individual license endorsements and the  
38 master license administrative fee imposed pursuant to Section  
39 15987.6.

1       15987.9. The Governor may appoint a third-party facilitator  
2 from the business community, who shall report directly to, and  
3 serve at the pleasure of, the Governor. The facilitator shall provide  
4 oversight over the creation of the center and the development of  
5 its master license system.

6       15987.10. A valid license already in effect prior to the effective  
7 of the act adding this subdivision need not be registered under the  
8 master license system until the renewal or expiration date of that  
9 license.

10       15987.11. Nothing in this part shall be construed to eliminate  
11 or reduce the authority of an agency that is legally authorized to  
12 issue a license from determining if a requested license shall be  
13 issued.



**RESPIRATORY CARE BOARD OF CALIFORNIA**

March 25, 2011

The Honorable Tom Berryhill  
California State Assembly  
State Capitol, Room 3076  
Sacramento, CA 95814

RE: AB 958 Regulatory Boards: Limitations Periods

Dear Assemblyman Berryhill:

The Respiratory Care Board (Board) has reviewed AB 958, and has respectfully taken an oppose unless amended position on this bill.

The Board licenses respiratory care practitioners (RCPs) who are one of the three licensed health care professionals who work at patients' bedsides most often (next to physicians and registered nurses). RCPs work under a medical director and specialize in providing evaluation of and treatment to patients with breathing difficulties as a result of heart, lung, and other disorders.

Business and Professions Code (B&P) section 3750.51 currently provides reasonable limitations periods for filing an accusation against a licensee. Specifically, this section provides an accusation shall be filed within three years from the date the Board discovers the alleged act or omission that is the basis for the disciplinary action, or within seven years from the date the alleged act or omission that is the basis for disciplinary action occurred, whichever occurs first. It also provides exceptions for circumstances related to acts involving sexual misconduct, or fraud in the procurement of a license, and establishes periods of tolling when an act involves a minor, or when an ongoing criminal investigation is pending. However, AB 958 would repeal B&P section 3750.51 and provide that any accusation filed against a licensee would have to be filed within one year after the Board discovers the alleged act or omission, or within four years after the act or omission occurred, whichever occurs first. In the case of a minor, the four-year period would be tolled until the minor reaches the age of majority, with no other exceptions afforded.

While the Board recognizes the need for swift action in disciplinary proceedings, and supports the concept of limitations periods such as those currently in statute, issues outside the Board's control often impede its ability to act as expeditiously as one year, as proposed by AB 958. For example, the bill does not account for any period if material evidence necessary for prosecuting or determining whether a disciplinary action would be appropriate is unavailable to the Board due to an ongoing criminal investigation. In addition, the bill does not take into account workload and case prioritization by the Office of the Attorney General, to which the Board has no control.

Moreover, in an instance that involves sexual misconduct or fraud in the procurement of a license, the Board may not become privy to such information until a period that exceeds the four year time limit. Prohibiting the Board from taking action against an individual who has engaged in acts of sexual misconduct, or obtained his or her license by fraud, as this bill would impose, would be detrimental to public protection.

Based on the foregoing, the Board is requesting AB 958 be amended to eliminate the repeal of B&P section 3750.51, and rather provide the Board an exemption from this proposed measure. This amendment will allow the Board to maintain vital authority to continue to pursue appropriate action, within pragmatic timeframes, in support of its consumer protection mandate. Should you have any questions, please feel free to contact Stephanie Nunez, Executive Officer at (916) 323-9983.

Respectfully,

A handwritten signature in black ink, appearing to read "Larry L. Renner".

Larry L. Renner, BS, RRT, RPFT  
President

**ASSEMBLY BILL**

**No. 958**

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**Introduced by Assembly Member Bill Berryhill**

February 18, 2011

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An act to add Section 110.5 to, and to repeal Sections 1670.2, 2230.5, 2960.05, 3137, 3750.51, 4982.05, 4990.32, 5561, 5661, 7686.5, 9884.20, and 9889.8 of, the Business and Professions Code, relating to regulatory boards.

LEGISLATIVE COUNSEL'S DIGEST

AB 958, as introduced, Bill Berryhill. Regulatory boards: limitations periods.

Existing law provides for the licensure and regulation of various professions and vocations by boards within the Department of Consumer Affairs. Existing law requires these boards to file disciplinary action accusations against licensees for various violations within a specified limitations period particular to each board.

This bill would delete those specified limitations periods for each board and would instead impose a specified limitations period on all boards within the Department of Consumer Affairs.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 110.5 is added to the Business and
- 2 Professions Code, to read:
- 3 110.5. (a) Notwithstanding any other provision of law and
- 4 except as provided in subdivisions (b) and (c), any accusation filed



1 against a licensee of a board described in Section 101, pursuant to  
2 Section 11503 of the Government Code, shall be filed within one  
3 year after the board discovers the act or omission alleged as the  
4 ground for disciplinary action, or within four years after the act or  
5 omission alleged as the ground for disciplinary action occurs,  
6 whichever occurs first.

7 (b) If an alleged act or omission involves a minor, the four-year  
8 limitations period provided for by subdivision (a) shall be tolled  
9 until the minor reaches the age of majority.

10 (c) If a licensee intentionally conceals evidence of wrongdoing,  
11 the four-year limitations period provided for by subdivision (a)  
12 shall be tolled during that period of concealment.

13 SEC. 2. Section 1670.2 of the Business and Professions Code  
14 is repealed.

15 ~~1670.2. (a) Except as otherwise provided in this section, any~~  
16 ~~proceeding initiated by the board against a licensee for the violation~~  
17 ~~of any provision of this chapter shall be filed within three years~~  
18 ~~after the board discovers the act or omission alleged as the ground~~  
19 ~~for disciplinary action, or within seven years after the act or~~  
20 ~~omission alleged as the ground for disciplinary action occurs,~~  
21 ~~whichever occurs first.~~

22 ~~(b) An accusation filed against a licensee pursuant to Section~~  
23 ~~11503 of the Government Code alleging fraud or willful~~  
24 ~~misrepresentation is not subject to the limitation in subdivision~~  
25 ~~(a).~~

26 ~~(c) An accusation filed against a licensee pursuant to Section~~  
27 ~~11503 of the Government Code alleging unprofessional conduct~~  
28 ~~based on incompetence, gross negligence, or repeated negligent~~  
29 ~~acts of the licensee is not subject to the limitation in subdivision~~  
30 ~~(a) upon proof that the licensee intentionally concealed from~~  
31 ~~discovery his or her incompetence, gross negligence, or repeated~~  
32 ~~negligent acts.~~

33 ~~(d) If an alleged act or omission involves any conduct described~~  
34 ~~in subdivision (c) of Section 1680 committed on a minor, the~~  
35 ~~seven-year limitations period in subdivision (a) and the 10-year~~  
36 ~~limitations period in subdivision (c) shall be tolled until the minor~~  
37 ~~reaches the age of majority.~~

38 ~~(e) An accusation filed against a licensee pursuant to Section~~  
39 ~~11503 of the Government Code alleging conduct described in~~  
40 ~~subdivision (c) of Section 1680 not committed on a minor shall~~

1 be filed within three years after the board discovers the act or  
2 omission alleged as the ground for disciplinary action, or within  
3 10 years after the act or omission alleged as the ground for  
4 disciplinary action occurs, whichever occurs first. This subdivision  
5 shall apply to a complaint alleging conduct received by the board  
6 on and after January 1, 2005.

7 (f) In any allegation, accusation, or proceeding described in  
8 this section, the limitations period in subdivision (a) shall be tolled  
9 for the period during which material evidence necessary for  
10 prosecuting or determining whether a disciplinary action would  
11 be appropriate is unavailable to the board due to an ongoing  
12 criminal investigation.

13 SEC. 3. Section 2230.5 of the Business and Professions Code  
14 is repealed.

15 2230.5. (a) Except as provided in subdivisions (b), (c), and  
16 (e), any accusation filed against a licensee pursuant to Section  
17 H503 of the Government Code shall be filed within three years  
18 after the board, or a division thereof, discovers the act or omission  
19 alleged as the ground for disciplinary action, or within seven years  
20 after the act or omission alleged as the ground for disciplinary  
21 action occurs, whichever occurs first.

22 (b) An accusation filed against a licensee pursuant to Section  
23 H503 of the Government Code alleging the procurement of a  
24 license by fraud or misrepresentation is not subject to the limitation  
25 provided for by subdivision (a).

26 (c) An accusation filed against a licensee pursuant to Section  
27 H503 of the Government Code alleging unprofessional conduct  
28 based on incompetence, gross negligence, or repeated negligent  
29 acts of the licensee is not subject to the limitation provided for by  
30 subdivision (a) upon proof that the licensee intentionally concealed  
31 from discovery his or her incompetence, gross negligence, or  
32 repeated negligent acts.

33 (d) If an alleged act or omission involves a minor, the seven-year  
34 limitations period provided for by subdivision (a) and the 10-year  
35 limitations period provided for by subdivision (c) shall be tolled  
36 until the minor reaches the age of majority.

37 (e) An accusation filed against a licensee pursuant to Section  
38 H503 of the Government Code alleging sexual misconduct shall  
39 be filed within three years after the board, or a division thereof,  
40 discovers the act or omission alleged as the ground for disciplinary

1 action, or within 10 years after the act or omission alleged as the  
2 ground for disciplinary action occurs, whichever occurs first. This  
3 subdivision shall apply to a complaint alleging sexual misconduct  
4 received by the board on and after January 1, 2002.

5 (f) The limitations period provided by subdivision (a) shall be  
6 tolled during any period if material evidence necessary for  
7 prosecuting or determining whether a disciplinary action would  
8 be appropriate is unavailable to the board due to an ongoing  
9 criminal investigation.

10 SEC. 4. Section 2960.05 of the Business and Professions Code  
11 is repealed.

12 ~~2960.05. (a) Except as provided in subdivisions (b), (c), and~~  
13 ~~(e), any accusation filed against a licensee pursuant to Section~~  
14 ~~11503 of the Government Code shall be filed within three years~~  
15 ~~from the date the board discovers the alleged act or omission that~~  
16 ~~is the basis for disciplinary action, or within seven years from the~~  
17 ~~date the alleged act or omission that is the basis for disciplinary~~  
18 ~~action occurred, whichever occurs first.~~

19 ~~(b) An accusation filed against a licensee pursuant to Section~~  
20 ~~11503 of the Government Code alleging the procurement of a~~  
21 ~~license by fraud or misrepresentation is not subject to the~~  
22 ~~limitations set forth in subdivision (a).~~

23 ~~(c) The limitation provided for by subdivision (a) shall be tolled~~  
24 ~~for the length of time required to obtain compliance when a report~~  
25 ~~required to be filed by the licensee or registrant with the board~~  
26 ~~pursuant to Article 11 (commencing with Section 800) of Chapter~~  
27 ~~1 is not filed in a timely fashion.~~

28 ~~(d) If an alleged act or omission involves a minor, the seven-year~~  
29 ~~limitations period provided for by subdivision (a) and the 10-year~~  
30 ~~limitations period provided for by subdivision (c) shall be tolled~~  
31 ~~until the minor reaches the age of majority.~~

32 ~~(e) An accusation filed against a licensee pursuant to Section~~  
33 ~~11503 of the Government Code alleging sexual misconduct shall~~  
34 ~~be filed within three years after the board discovers the act or~~  
35 ~~omission alleged as the ground for disciplinary action, or within~~  
36 ~~10 years after the act or omission alleged as the ground for~~  
37 ~~disciplinary action occurs, whichever occurs first. This subdivision~~  
38 ~~shall apply to a complaint alleging sexual misconduct received by~~  
39 ~~the board on and after January 1, 2002.~~

1 (f) The limitations period provided by subdivision (a) shall be  
2 tolled during any period if material evidence necessary for  
3 prosecuting or determining whether a disciplinary action would  
4 be appropriate is unavailable to the board due to an ongoing  
5 criminal investigation.

6 SEC. 5. Section 3137 of the Business and Professions Code is  
7 repealed.

8 ~~3137. (a) Except as otherwise provided in this section, any~~  
9 ~~accusation filed against a licensee pursuant to Section 11503 of~~  
10 ~~the Government Code for the violation of any provision of this~~  
11 ~~chapter shall be filed within three years after the board discovers~~  
12 ~~the act or omission alleged as the ground for disciplinary action,~~  
13 ~~or within seven years after the act or omission alleged as the ground~~  
14 ~~for disciplinary action occurs, whichever occurs first.~~

15 (b) ~~An accusation filed against a licensee pursuant to Section~~  
16 ~~11503 of the Government Code alleging fraud or willful~~  
17 ~~misrepresentation is not subject to the limitation in subdivision~~  
18 ~~(a).~~

19 (c) ~~An accusation filed against a licensee pursuant to Section~~  
20 ~~11503 of the Government Code alleging unprofessional conduct~~  
21 ~~based on incompetence, gross negligence, or repeated negligent~~  
22 ~~acts of the licensee is not subject to the limitation in subdivision~~  
23 ~~(a) upon proof that the licensee intentionally concealed from~~  
24 ~~discovery his or her incompetence, gross negligence, or repeated~~  
25 ~~negligent acts.~~

26 (d) ~~If an alleged act or omission involves any conduct described~~  
27 ~~in Section 726 committed on a minor, the 10-year limitations period~~  
28 ~~in subdivision (c) shall be tolled until the minor reaches the age~~  
29 ~~of majority.~~

30 (e) ~~An accusation filed against a licensee pursuant to Section~~  
31 ~~11503 of the Government Code alleging conduct described in~~  
32 ~~Section 726 shall be filed within three years after the board~~  
33 ~~discovers the act or omission alleged as the ground for disciplinary~~  
34 ~~action, or within 10 years after the act or omission alleged as the~~  
35 ~~ground for disciplinary action occurs, whichever occurs first. This~~  
36 ~~subdivision shall apply to a complaint alleging conduct received~~  
37 ~~by the board on and after January 1, 2006.~~

38 (f) ~~In any allegation, accusation, or proceeding described in this~~  
39 ~~section, the limitations period in subdivision (a) shall be tolled for~~  
40 ~~the period during which material evidence necessary for~~

1 prosecuting or determining whether a disciplinary action would  
2 be appropriate is unavailable to the board due to an ongoing  
3 criminal investigation.

4 SEC. 6. Section 3750.51 of the Business and Professions Code  
5 is repealed.

6 3750.51. (a) Except as provided in subdivisions (b), (c), and  
7 (c), any accusation filed against a licensee pursuant to Section  
8 11503 of the Government Code shall be filed within three years  
9 from the date the board discovers the alleged act or omission that  
10 is the basis for disciplinary action, or within seven years from the  
11 date the alleged act or omission that is the basis for disciplinary  
12 action occurred, whichever occurs first.

13 (b) An accusation filed against a licensee pursuant to Section  
14 11503 of the Government Code alleging the procurement of a  
15 license by fraud or misrepresentation is not subject to the  
16 limitations set forth in subdivision (a).

17 (c) The limitation provided for by subdivision (a) shall be tolled  
18 for the length of time required to obtain compliance when a report  
19 required to be filed by the licensee or registrant with the board  
20 pursuant to Article 11 (commencing with Section 800) of Chapter  
21 1 is not filed in a timely fashion.

22 (d) If an alleged act or omission involves a minor, the seven-year  
23 limitations period provided for by subdivision (a) and the 10-year  
24 limitations period provided for by subdivision (c) shall be tolled  
25 until the minor reaches the age of majority.

26 (e) An accusation filed against a licensee pursuant to Section  
27 11503 of the Government Code alleging sexual misconduct shall  
28 be filed within three years after the board discovers the act or  
29 omission alleged as the ground for disciplinary action, or within  
30 10 years after the act or omission alleged as the ground for  
31 disciplinary action occurs, whichever occurs first.

32 (f) The limitations period provided by subdivision (a) shall be  
33 tolled during any period if material evidence necessary for  
34 prosecuting or determining whether a disciplinary action would  
35 be appropriate is unavailable to the board due to an ongoing  
36 criminal investigation.

37 SEC. 7. Section 4982.05 of the Business and Professions Code  
38 is repealed.

39 4982.05. (a) Except as provided in subdivisions (b), (c), and  
40 (c), any accusation filed against a licensee pursuant to Section

1 ~~11503 of the Government Code shall be filed within three years~~  
2 ~~from the date the board discovers the alleged act or omission that~~  
3 ~~is the basis for disciplinary action, or within seven years from the~~  
4 ~~date the alleged act or omission that is the basis for disciplinary~~  
5 ~~action occurred, whichever occurs first.~~

6 ~~(b) An accusation filed against a licensee pursuant to Section~~  
7 ~~11503 of the Government Code alleging the procurement of a~~  
8 ~~license by fraud or misrepresentation is not subject to the~~  
9 ~~limitations set forth in subdivision (a).~~

10 ~~(c) The limitation provided for by subdivision (a) shall be tolled~~  
11 ~~for the length of time required to obtain compliance when a report~~  
12 ~~required to be filed by the licensee or registrant with the board~~  
13 ~~pursuant to Article 11 (commencing with Section 800) of Chapter~~  
14 ~~1 is not filed in a timely fashion.~~

15 ~~(d) If an alleged act or omission involves a minor, the seven-year~~  
16 ~~limitations period provided for by subdivision (a) and the 10-year~~  
17 ~~limitations period provided for by subdivision (c) shall be tolled~~  
18 ~~until the minor reaches the age of majority.~~

19 ~~(e) An accusation filed against a licensee pursuant to Section~~  
20 ~~11503 of the Government Code alleging sexual misconduct shall~~  
21 ~~be filed within three years after the board discovers the act or~~  
22 ~~omission alleged as the grounds for disciplinary action, or within~~  
23 ~~10 years after the act or omission alleged as the grounds for~~  
24 ~~disciplinary action occurs, whichever occurs first. This subdivision~~  
25 ~~shall apply to a complaint alleging sexual misconduct received by~~  
26 ~~the board on and after January 1, 2002.~~

27 ~~(f) The limitations period provided by subdivision (a) shall be~~  
28 ~~tolled during any period if material evidence necessary for~~  
29 ~~prosecuting or determining whether a disciplinary action would~~  
30 ~~be appropriate is unavailable to the board due to an ongoing~~  
31 ~~criminal investigation.~~

32 ~~(g) For purposes of this section, “discovers” means the later of~~  
33 ~~the occurrence of any of the following with respect to each act or~~  
34 ~~omission alleged as the basis for disciplinary action:~~

35 ~~(1) The date the board received a complaint or report describing~~  
36 ~~the act or omission.~~

37 ~~(2) The date, subsequent to the original complaint or report, on~~  
38 ~~which the board became aware of any additional acts or omissions~~  
39 ~~alleged as the basis for disciplinary action against the same~~  
40 ~~individual.~~

1 (3) The date the board receives from the complainant a written  
2 release of information pertaining to the complainant's diagnosis  
3 and treatment.

4 SEC. 8. Section 4990.32 of the Business and Professions Code  
5 is repealed.

6 4990.32. (a) Except as otherwise provided in this section, an  
7 accusation filed pursuant to Section 11503 of the Government  
8 Code against a licensee or registrant under the chapters the board  
9 administers and enforces shall be filed within three years from the  
10 date the board discovers the alleged act or omission that is the  
11 basis for disciplinary action or within seven years from the date  
12 the alleged act or omission that is the basis for disciplinary action  
13 occurred, whichever occurs first.

14 (b) An accusation filed against a licensee alleging the  
15 procurement of a license by fraud or misrepresentation is not  
16 subject to the limitations set forth in subdivision (a).

17 (c) The limitations period provided by subdivision (a) shall be  
18 tolled for the length of time required to obtain compliance when  
19 a report required to be filed by the licensee or registrant with the  
20 board pursuant to Article 11 (commencing with Section 800) of  
21 Chapter 1 is not filed in a timely fashion.

22 (d) An accusation alleging sexual misconduct shall be filed  
23 within three years after the board discovers the act or omission  
24 alleged as the grounds for disciplinary action or within 10 years  
25 after the act or omission alleged as the grounds for disciplinary  
26 action occurred, whichever occurs first. This subdivision shall  
27 apply to a complaint alleging sexual misconduct received by the  
28 board on and after January 1, 2002.

29 (e) If an alleged act or omission involves a minor, the seven-year  
30 limitations period provided for by subdivision (a) and the 10-year  
31 limitations period provided for by subdivision (d) shall be tolled  
32 until the minor reaches the age of majority. However, if the board  
33 discovers an alleged act of sexual contact with a minor under  
34 Section 261, 286, 288, 288.5, 288a, or 289 of the Penal Code after  
35 the limitations periods described in this subdivision have otherwise  
36 expired, and there is independent evidence that corroborates the  
37 allegation, an accusation shall be filed within three years from the  
38 date the board discovers that alleged act.

39 (f) The limitations period provided by subdivision (a) shall be  
40 tolled during any period if material evidence necessary for

1 prosecuting or determining whether a disciplinary action would  
2 be appropriate is unavailable to the board due to an ongoing  
3 criminal investigation.

4 (g) For purposes of this section, “discovers” means the latest  
5 of the occurrence of any of the following with respect to each act  
6 or omission alleged as the basis for disciplinary action:

7 (1) The date the board received a complaint or report describing  
8 the act or omission.

9 (2) The date, subsequent to the original complaint or report, on  
10 which the board became aware of any additional acts or omissions  
11 alleged as the basis for disciplinary action against the same  
12 individual.

13 (3) The date the board receives from the complainant a written  
14 release of information pertaining to the complainant’s diagnosis  
15 and treatment.

16 SEC. 9. Section 5561 of the Business and Professions Code is  
17 repealed.

18 5561. All accusations against licensees charging the holder of  
19 a license issued under this chapter with the commission of any act  
20 constituting a cause for disciplinary action shall be filed with the  
21 board within five years after the board discovers, or through the  
22 use of reasonable diligence should have discovered, the act or  
23 omission alleged as the ground for disciplinary action, whichever  
24 occurs first, but not more than 10 years after the act or omission  
25 alleged as the ground for disciplinary action. However, with respect  
26 to an accusation alleging a violation of Section 5579, the accusation  
27 may be filed within three years after the discovery by the board  
28 of the alleged facts constituting the fraud or misrepresentation  
29 prohibited by Section 5579.

30 SEC. 10. Section 5661 of the Business and Professions Code  
31 is repealed.

32 5661. All accusations against a licensee shall be filed within  
33 three years after the board discovers, or through the use of  
34 reasonable diligence should have discovered, the act or omission  
35 alleged as the ground for disciplinary action or within six years  
36 after the act or omission alleged as the ground for disciplinary  
37 action, whichever occurs first. However, with respect to an  
38 accusation alleging a violation of Section 5667, the accusation  
39 may be filed within three years after the discovery by the board



1 of the alleged facts constituting the fraud or misrepresentation  
2 prohibited by Section 5667.

3 If any accusation is not filed within the time provided in this  
4 section, no action against a licensee shall be commenced under  
5 this article.

6 SEC. 11. Section 7686.5 of the Business and Professions Code  
7 is repealed.

8 ~~7686.5. All accusations against licensees shall be filed with~~  
9 ~~the bureau within two years after the performance of the act or~~  
10 ~~omission alleged as the ground for disciplinary action; provided,~~  
11 ~~however, that the foregoing provision shall not constitute a defense~~  
12 ~~to an accusation alleging fraud or misrepresentation as a ground~~  
13 ~~for disciplinary action. The cause for disciplinary action in such~~  
14 ~~case shall not be deemed to have accrued until discovery, by the~~  
15 ~~bureau, of the facts constituting the fraud or misrepresentation;~~  
16 ~~and, in such case, the accusation shall be filed within three years~~  
17 ~~after such discovery.~~

18 SEC. 12. Section 9884.20 of the Business and Professions  
19 Code is repealed.

20 ~~9884.20. All accusations against automotive repair dealers~~  
21 ~~shall be filed within three years after the performance of the act~~  
22 ~~or omission alleged as the ground for disciplinary action, except~~  
23 ~~that with respect to an accusation alleging fraud or~~  
24 ~~misrepresentation as a ground for disciplinary action, the accusation~~  
25 ~~may be filed within two years after the discovery, by the bureau,~~  
26 ~~of the alleged facts constituting the fraud or misrepresentation.~~

27 SEC. 13. Section 9889.8 of the Business and Professions Code  
28 is repealed.

29 ~~9889.8. All accusations against licensees shall be filed within~~  
30 ~~three years after the act or omission alleged as the ground for~~  
31 ~~disciplinary action, except that with respect to an accusation~~  
32 ~~alleging a violation of subdivision (d) of Section 9889.3, the~~  
33 ~~accusation may be filed within two years after the discovery by~~  
34 ~~the bureau of the alleged facts constituting the fraud or~~  
35 ~~misrepresentation prohibited by that section.~~

AMENDED IN ASSEMBLY APRIL 13, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

**ASSEMBLY BILL**

**No. 991**

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**Introduced by Assembly Member Olsen**

**(Principal coauthors: Assembly Members Gatto, and Perea Gordon, Hagman, Harkey, Knight, Mansoor, Perea, Portantino, Silva, and Wagner)**

~~(Coauthor: Senator Berryhill)~~

*(Coauthors: Senators Berryhill, Fuller, Harman, and Runner)*

February 18, 2011

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An act to add Section 12019.5 to the Government Code, relating to state government.

LEGISLATIVE COUNSEL'S DIGEST

AB 991, as amended, Olsen. State government: licenses: California Licensing and Permit Center.

Existing law requires members of the public to obtain license, permits, or to register with state agencies prior to undertaking certain types of tasks.

This bill would require the Governor to establish a Internet Web site, known as the California Licensing and Permit Center (CLPC), to assist the public with licensing, permitting, and registration requirements of state agencies. This bill would require the Governor to operate, via both e-mail and telephone methods, a help center to assist applicants with licensing, permitting, and registration requirements. This bill would require state agencies that the Governor determines has licensing authority to cooperate with this program by providing accurate updated information about their licensing requirements.

This bill would create the California License and Permit Fund in the State Treasury, and require state agencies that are required to participate in the CLPC to reallocate a portion of their operating budget, as specified, to pay for the operating cost of the CLPC. This bill would state that upon appropriation by the Legislature, revenues from the fund will be used only for purposes of the bill.

This bill would require the CLPC to be provided to *the* public free of charge.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 12019.5 is added to the Government  
2 Code, to read:

3 12019.5. (a) The Governor, or his or her designee, shall, in  
4 cooperation with the California Technology Agency, establish an  
5 Internet Web site to assist the public with licensing, permitting,  
6 and registration requirements. This Internet Web site shall be  
7 known as the California Licensing and Permit Center (CLPC) and  
8 shall be accessible from the Governor's Web site. This Internet  
9 Web site shall contain information on *the* licensing, permitting,  
10 and registration requirements of state agencies, and shall include,  
11 but not be limited to, information that does all of the following:

12 (1) Assists potential applicants with identifying the type of  
13 applications, forms, or other similar documents an applicant may  
14 need.

15 (2) Provides a digital copy of all state applications, forms, or  
16 other similar documents.

17 (3) Instructs potential applicants where to transmit applications,  
18 forms, or other similar documents.

19 (b) The Governor, or his or her designee, shall operate, via both  
20 e-mail and telephone methods, a help center that will assist  
21 applicants with licensing, permitting, and registration requirements.

22 (c) The Governor, in cooperation with the California Technology  
23 Agency, shall ensure that the Internet Web site is user friendly and  
24 provides accurate, updated resources.

25 (d) Each state agency that the Governor determines has licensing  
26 authority shall participate fully with this program by providing  
27 accurate updated information about its licensing requirements.

1 (e) (1) The California License and Permit Fund is hereby  
2 created in the State Treasury. Each state agency that is required to  
3 participate in the CLPC shall reallocate funds annually from its  
4 operating budget to the fund in the amount necessary to pay for  
5 the agency's proportionate share of establishing and operating the  
6 CLPC.

7 (2) All moneys in the fund shall, upon appropriation by the  
8 Legislature, be used by the Governor only for the purposes of this  
9 section.

10 (f) The CLPC shall be provided to the public free of any charges.

**ASSEMBLY BILL**

**No. 1273**

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**Introduced by Assembly Member Grove**

February 18, 2011

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An act relating to boards and commissions.

LEGISLATIVE COUNSEL’S DIGEST

AB 1273, as introduced, Grove. Boards and commissions.

Existing law establishes various boards and commissions to carry out particular tasks, investigations, or other activities.

This bill would state that it is the intent of the Legislature to enact legislation that would codify Governor Arnold Schwarzenegger’s “Governor’s Reorganization Plan 1: Reforming California’s Boards and Commissions” from 2004.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. It is the intent of the Legislature to enact
- 2 legislation that would codify Governor Arnold Schwarzenegger’s
- 3 “Governor’s Reorganization Plan 1: Reforming California’s Boards
- 4 and Commissions” from 2004.